FROM THE RULE OF LAW TO THE LAW OF RULE

Dismantling the Rule of Law in Hungary (2010-2024)

Edited by
Gábor Gadó
Zsuzsa Kerekes
Bálint Magyar

CEU Democracy Institute

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Table of Contents

About the Contributors VII
Editors' Preface IX
1. Constitution 1
2. Constitutional Court 6
3. Parliament 11
4. President of the Republic 14
5. Towards Governance by Decree 16
6. Courts and the Justice System 23
7. Police 30
8. Military 32
9. Intelligence Services and National Security 37
10. Central Oversight Agencies 40
11. Anti-corruption Institutions 44
12. Local Self-Governments 50
13. Freedom of Information 53
14. Freedom of Expression 56
15. Media 60
16. Freedom of Assembly 64
17. Freedom of Association 67
18. Elections 73
19. Education and Research 81
20. Culture 87
21. Freedom of Religion 93
22. Property Rights 97

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Editors' Preface

(Gábor Gadó, Zsuzsa Kerekes, Bálint Magyar)

Hungary has been an autocracy since 2010. Attempts toward a transition to autocracy were perceptible in Viktor Orbán's first term as Prime Minister (1998-2002), but lack of a two-thirds Parliamentary majority prevented his autocratic attempt. However, in the elections of 2010, Fidesz gained a constitutional supermajority in the wake of the political, economic, and moral crisis that accompanied the second term of the previous, socialist-liberal administration. This can be seen as an autocratic breakthrough, since it involved the acquisition of a monopoly on political power. This political monopoly, in the case of Hungary, means that a political force, acting alone without the requirement of assent from and consensus with other political forces, may amend the constitution, ratify any law, including those requiring a two-thirds majority, and pack the institutions of checks and balances with its own loyal followers.

The autocratic breakthrough in Hungary was made possible by the absence of three institutional barriers. First, there is our disproportional electoral system, in which a two-thirds majority in Parliament was secured by only 53% of the votes in 2010. In 2014, a mere 44% proved sufficient for a supermajority because of the intervening one-sided changes to the election law. Second, the absence of a divided executive power – i.e., no direct election of the President of the Republic, combined with a government elected by Parliament – facilitated the concentration of political power. Thirdly, the fact that constitutional amendments, or even the drafting of an entirely new constitution, require a two-thirds vote of Parliament and nothing more. This has opened the door for an unending string of amendments to fit the needs of the moment, and allowed for the introduction, in 2020, of rule by decree.

Following the autocratic breakthrough in 2010, we have seen a consistent process of autocratic stabilization throughout the most diverse aspects of our society – the economy, the media, education, research, and the like, which have been made subservient to the regime. Taken together, these changes mean that Hungary has developed its own peculiar form of autocracy in which the governing machinery functions as a mafia state—a sort of centrally directed criminal organization.

Although, on paper, the system in Hungary preserves a Weberian base of legal and rational legitimacy, in actuality the primacy of law has been replaced by the primacy of political interests over the rule of law. Government by decree has replaced government by law.

In the collection of writings presented here, the editors and contributors have endeavored to give an account of this process and its devastating effects on the legal and institutional structures of the Hungarian state. At the same time, we have striven for clarity of understanding, economy of words and, ultimately, to offer the reader a broad overview of the dismantling of the constitutional structures of liberal democracy in Hungary.

1. Constitution

(Zoltán Szente)

1.1 Amendments to the 1949/1989 Constitution

1.1.1 *Number, purpose, and subject of amendments*

The right-wing-conservative coalition government, which won a two-thirds parliamentary majority in the 2010 general elections and thus constitution-making power, embarked on energetic reform of the Hungarian legal system from an early stage. Between May 2010 and the end of November 2011, the Constitution (adopted in 1949 but thoroughly revised in 1989) was amended a total of 12 times. The constitution-making process was so rushed that even after the adoption of the new Fundamental Law in April 2011, the previous constitutional rules were amended several times (because the Fundamental Law only entered into force on 1 January 2012).

The amendments to the Constitution mainly concerned the system of legal sources and the constitutional status of certain public authorities (mainly the President of the Republic, the National Assembly, and the Constitutional Court (CC)). Some of the amendments were of a more technical or political nature, such as the increase in the number of constitutional judges to 15 (and the rapid election of new ones) and the election of the President of the Kúria (the Supreme Court) before the end of 2011.

1.1.2 *The process of the amendments (number of working days, rules of procedure)*

Amendments to the Constitution were made extremely rapidly: the three amendments initiated by the Government, for example, were discussed by Parliament in an urgent procedure. Of the 12 amendments, none of the former lasted more than a few hours: in the general debates, just over three hours were spent, on average, discussing each constitutional amendment. In comparison, second readings lasted, on average, a little more than 30 minutes each (but no second reading at all was held on two amendments). The constitutional amendments passed the National Assembly in an average of 16 days; in the case of the fastest amendment, six days passed between the submission of the proposal and the final vote, while the longest

procedure was 38 days. Of the successful constitutional amendment proposals, three were submitted by the Government and nine by MPs of the governing parties.

1.2 Abolition of the Constitution and the process of the preparation and adoption of the Fundamental Law of 2011

In June 2010, the National Assembly established an ad hoc committee of 45 members from the five parliamentary parties "in order to prepare the drafting of the new Constitution". In November, the members of two opposition parties (MSZP and LMP) left the committee, protesting the restriction of the CC's powers and the "dismantling of the rule of law". They never returned. In their absence, members of the two governing parties (Fidesz and KDNP) and the far-right Jobbik Party continued the process of constitution-making.

After a total of 17 hours of discussion, the Constitution-Drafting Committee prepared its "conception" of the new constitution, which was adopted by the Parliament on March 7, 2011, also calling for all MPs to submit their own constitutional bill within eight days, by March 15, "taking into account" the adopted conception (an independent representative submitted a draft constitution, but it was not submitted for detailed discussion). At the same time, the government majority rejected a bill on a broad social consultation of the new constitution but launched a so-called "national consultation" – a procedure previously unknown in Hungarian law – which meant that a questionnaire consisting of 12 questions about certain provisions of the new constitution was sent to all voters. However, this had no effect on the constitution-making process (its results were presented in Parliament by the Prime Minister after the general debate was closed).

In the end, the National Assembly did not debate the draft prepared by the Constitution-Drafting Committee, but on 14 March, the two factions of the governing parties presented a completely new draft text. Since no verifiable information is available on the preparation of this draft, it is not known who drafted the new constitutional text.

The parliamentary debate on the Fundamental Law lasted 42 hours and was the main topic for five session days (it was on the agenda for seven session days in total). It was finally voted on 18 April 2011 by the National Assembly with the votes of the governing parties, passing by 262:44, with one abstention (the two opposition parties boycotting the ad hoc committee did not participate in the vote, and Jobbik voted against it).

1.3 Amendments to the Fundamental Law

1.3.1 *Number, purpose, and subject of amendments*

Constitution-making fever did not let up even after the entry into force of the Fundamental Law: it had been amended 12 times by the end of 2023, which means that the text of the Fundamental Law changed, on average, every year. Of the current 166 sections, 88 have been changed (been repealed, amended, or included as a new provision in the constitutional text). This means that more than half of the provisions in force have been affected by amendments to the Fundamental Law. The content of some provisions changed more than once: for example, Article 26 on the legal status and appointment of judges and the election of the President of the Kúria was changed three times by the Fourth, the Seventh, and the Eighth Amendments. All provisions related to the special legal order were changed, as were all final clauses. While the former were modified as a result of a conceptual change, the latter received several significant additions. In fact, even on the day the Fundamental Law took effect, in parallel with its promulgation, a supplement to it entitled "Transitional Provisions" was published, and during the first year the new constitution was in effect, it was amended three times. From the beginning, the amendments to the Fundamental Law had an instrumental role, which means that the latter usually changed the text in accordance with the political needs of the governing parties in order to eliminate possible constitutional problems. This is clearly demonstrated, for example, by the First Amendment to the Fundamental Law, which aimed to prevent the constitutional review of the Transitional Provisions (unsuccessfully), while the Fourth Amendment inserted several legal provisions into the constitutional text previously declared unconstitutional by the Constitutional Court. The Second Amendment to the Fundamental Law never entered into force; the Fifth Amendment partially amended the Fourth, the Eighth modified the Seventh, and the Tenth partially amended the Ninth. The Eleventh Amendment to the Fundamental Law was purely symbolic, bringing back some pre-war terminology to Hungarian public law.

1.3.2 *The process of amendments (session days, procedures)*

The parliamentary procedure associated with the 12 amendments to the Fundamental Law moved even faster than the similar number of changes of the previous Constitution: it took a total of about 32 hours to discuss the former, i.e., each plenary session dealing with one amendment took approx. two and a half hours (it should be noted, however, that the last seven amendments were discussed in a simplified procedure, according to which the second reading took place no longer

in a plenary session but in an appointed special committee, whose procedure is not public). The Government's two proposals to amend the Fundamental Law were discussed by the Parliament in an extraordinary session, and on one occasion the debate took place in an urgent procedure (however, this possibility ceased in 2014).

Among the amendments to the Fundamental Law that were finally adopted, seven were submitted by the Government and four by MPs of the governing parties. However, an amendment was also submitted by members of the opposition (on abolishing the constitutional rules on the establishment of separate administrative courts, which the Government supported due to the objections of the European Union). Apart from this, however, no other amendment proposals by the opposition to the Fundamental Law (the number of which far exceeded those finally adopted) were put on the agenda by the Parliament.

1.4 Substantive criticisms of the Fundamental Law

The manner in which the Fundamental Law was adopted and certain elements of its content were subject to a number of domestic and international criticisms, for example, from the Venice Commission and the European Parliament. Some of them objected to the unilateral constitution-making process, partly because it did not succeed in creating a political consensus regarding its preparation and adoption and partly because it did not ensure real input for citizens and civil organizations.

Some criticisms regarding the content of the Fundamental Law are related to ideological provisions that contain definite value judgments in terms of worldview and moral issues that otherwise divide society (such as Christian culture, the protection of which is the duty of all state bodies). Many provisions do not have normative content (such as that concerning constitutional identity based on the ancient, pre-war "historical constitution"), which makes the constitutional interpretation unpredictable or allows for arbitrary interpretation of the constitutional text.

Other critics have claimed that the Fundamental Law weakens the system of checks and balances, above all by almost completely eliminating the constitutional review of public finances, limiting the budgetary power of the Parliament by an unelected body (the so-called Budget Council), and other provisions.

In some respects, the level of fundamental rights protection has also been diminished. For example, the Fundamental Law degraded the right to social security to a state goal, and legal definitions of family and marriage according to "Christian values" have severely limited the right to privacy and the prohibition of discrimination.

As far as the amendments to the Fundamental Law are concerned, criticisms have been basically two-fold; on the one hand, these modifications have changed

the constitutional text in accordance with the current political interests of the governing parties, and on the other hand, their goal was frequently to overrule Constitutional Court decisions unfavorable to the Government's aspirations and interests and to eliminate the constitutional review of the controversial legislative acts. All this has had a detrimental effect on the stability and logical unity of the Fundamental Law inasmuch as the constitutional text has become a legal patchwork, and several internal contradictions have arisen because a number of provisions that had been previously considered unconstitutional were included in the text without harmonizing them with the previous ones.

Overall, however, flexibility proved to be the biggest shortcoming of the Fundamental Law, as the constitution can be amended by a two-thirds majority vote of the members of Parliament, and in the mixed and highly disproportionate electoral system that has existed since 2010, the Fidesz-KDNP party alliance has always been able to achieve that supermajority, thus obtaining constitution-making power. In this way, the government majority not only unilaterally adopted a constitution in accordance with its own preferences but was also able to capture the countervailing institutions by continuously changing the legal status of public authorities, determining their composition, or selecting their leading officials. As a result, the Fundamental Law has played an instrumental role from the beginning, and instead of effectively limiting the exercise of public power, it has become a tool and means of legitimizing the current political interests of the Government.

2. Constitutional Court

(Ágnes Kovács)

2.1 Amendments before the 2012 Fundamental Law

After taking power in 2010, the Orbán government immediately embarked on measures to capture the Constitutional Court (CC). By the time the new Fundamental Law took effect, the governing parties had reshaped the CC's composition and powers through a series of constitutional and legal amendments, resulting in the restriction of the CC's independence. Many of these measures aimed to pack the court with judges nominated by the ruling majority.

2.1.1 *July 2010*

On July 5, 2010, the two-thirds parliamentary majority amended the 1989 Constitution with changes to the regulation relating to nominating CC judges. The new regulation reshaped the membership of the ad hoc parliamentary committee responsible for nominating justices to the CC. While this committee had previously been made up of one member from each parliamentary faction, according to the new rules, the composition of the Nominating Committee had to take into account the proportions between parliamentary groups. As a result, the new regulation put an end to the Committee's parity, placing the nomination of CC judges in the hands of the two-thirds (one-party, in this case) parliamentary majority, eliminating all institutional guarantees requiring consultation with the opposition. The CC judges, elected after 2010, with few exceptions, have been nominated and supported exclusively by Fidesz-KDNP representatives. (In 2022, Fidesz-KDNP amended the nomination rules again, replacing the previous ad hoc committee with the standing committee of the National Assembly dealing with constitutional issues.)

2.1.2 *November 2010*

The CC decision 184/2010 (X.28) annulled the 98% special tax on public sector severance pay over two million forints (about 5500 USD in 2024). This was a punitive tax designed in part to penalize those government MPs from the previous term who had failed to be re-elected. The very day this decision was published, the government announced a constitutional amendment that, as a punishment, considerably restricted the CC's jurisdiction in supervising laws relating to public finances.

This regulation was later entrenched in the new Fundamental Law that took force in 2012, stipulating that budget and tax-related legislation can only be reviewed based on certain fundamental rights, such as the right to life, the right to human dignity, the right to protection of personal data, the freedom of thought, conscience, and religion, and rights pertaining to Hungarian citizenship. (Article 37(4) of the Fundamental Law) The Hungarian government was, however, later compelled to annul the 98% punitive tax in compliance with a decision of the European Court of Human Rights (ECHR).

2.1.3 *September 2011*

The size of the CC was expanded from 11 judges to 15 from September 1, 2011, as a result of another single-party constitutional amendment. Using the new regulations, the governing majority elected 5 new CC judges in the summer of 2011 (one mandate had hitherto been unfilled). At the same time, rules for electing the President of the Constitutional Court, and for the term of office of the CC judges were also changed. Previously, the President had been elected by the members of the Court itself, while the new regulation gave this task to the National Assembly, with its two-thirds majority. Furthermore, the 5 new judges were appointed for 12 years, compared to the previous 9-year term.

2.2 The Fundamental Law and a New Constitutional Court

The Constitutional Court's powers were significantly altered when the Fundamental Law took effect on January 1, 2012. Access to the court was considerably constrained, and its powers were changed to limit its ability to function as an institutional check on political power, and rather to exercise control over ordinary courts' jurisprudence. This setup was created by the following amendments (here we focus only on a few of the more important changes).

2.2.1 ***Actio Popularis***, which made it possible for anyone, without personal interest, to initiate the abstract constitutional review of legislation before the CC, was abolished.

2.2.2 ***The right to submit a posteriori constitutional review*** was restricted to a small number of public officials: the Government, one-quarter of the representatives in the National Assembly, the Ombudsman (Commissioner for Fundamental Rights), and, beginning in March of 2013, the President of the Kúria and the Attorney General.

2.2.3 ***The Fundamental Law introduced the constitutional complaint***, which can be initiated against final court decisions. This made ordinary courts' jurisprudence subject to the CC's review. Proposals of this type constitute a significant proportion of CC cases. Although the introduction of the constitutional complaint procedure can be easily justified in a democracy based on the rule of law, experience in Hungary has shown that in the absence of the rule of law, such a complaint can become a political weapon, as a CC packed by the government may exercise political oversight over the functioning of even relatively independent ordinary courts.

2.3 The Fourth Amendment to the Fundamental Law

The Fourth Amendment to Hungary's Fundamental Law triggered harsh domestic and international criticism, and it dealt a fresh blow to the independence of the Constitutional Court.

2.3.1 ***This amendment formally set aside CC decisions delivered before the 2012 Fundamental Law came into force***, with the aim of eliminating the previous rule of law-friendly case law of the CC. Similarly, several rules of interpretation entrenched in the original text of the Fundamental Law had restricted the CC's interpretive domain, such as Article R(3), or Article 28.

2.3.2 ***As a result of the Fourth Amendment***, the Fundamental Law expressly states that the CC can only review constitutional amendments based on procedural regulations regarding the adoption and promulgation of an amendment. With this, the Fundamental Law prohibits any review of substance and content, thereby precluding the very notion of unconstitutional constitutional amendment – an approach that had not been categorically rejected by a previous CC decision (see Decision 45/2012 (XII. 29.).

2.3.3 ***The two-thirds parliamentary majorit***y inserted into the text of the Fundamental Law several provisions previously declared unconstitutional by the CC, thereby making it clear that earlier CC decisions unfavorable to the government can be nullified by constitutional amendments. Such cases include the concept of family, the qualifications for church status, political advertising, the power of the National Judicial Office's President for case reassignment, scholarship contracts for university students, and provisions regarding the illegality of homelessness.

2.4 The Captured Constitutional Court

2.4.1 ***Once judges appointed by the governing parties had become a majority in the CC***, it lost its role in the balance of powers and proceeded to rubber-stamp the constitutionality of a series of clearly unconstitutional laws. This was the case, for instance, regarding the criminalization of homelessness (Decision 19/2019. (VI. 18) CC), or the government decree finding the merger of hundreds of government-friendly news outlets under the Central European Press and Media Foundation (KESMA) as national strategic importance (Decision 16/2020. (VII. 8) CC). Furthermore, the CC did not find emergency decrees issued by the government under the pretext of the "state of danger" unconstitutional which limited access to public-interest data (Decision 15/2021. (V.13) CC) or imposed a blanket ban on the exercise of the right to assembly (Decision 23/2021. (VII. 13) CC).

The CC was reluctant to decide, and thereby legitimized serious human rights violations such as the regulation of whole life sentences (see most recently the Decision 3492/2023. (XII.1) CC), the "Lex CEU", which expelled the Central European University to Vienna (Decision 3318/2021. (VII. 23) CC, and the so-called "Lex NGO" adopted in 2017 to harass and intimidate Hungarian NGOs (Decision 3410/2022. (X. 21) CC). The ECtHR and the CJEU found these laws in breach of international and/or EU law.

2.4.2 ***In recent years, the Constitutional Court has demonstrated*** that it does not only passively endorse the government's policies, but actively contribute to dismantling the rule of law and democratic constitutionalism.

2.4.3 ***In 2016***, the government initiated a referendum on the rejection of mandatory refugee resettlement quotas set out by the EU. This measure would have required Hungary to process 1294 asylum requests. This invalid "quota referendum" was followed by an unsuccessful amendment of the Fundamental Law, however, the government's political plan was ultimately implemented by the CC, which, in Decision 22/2015. (XII. 5), declared that it had the power, in certain cases, to examine whether an EU legal act was compatible with fundamental rights, Hungary's sovereignty or constitutional identity. With this decision, the CC created jurisdiction for itself to review EU law based on vaguely formulated notions such as "constitutional identity."

2.4.4 ***At the end of 2019***, the governing majority enacted a law allowing public authorities to lodge complaints with the CC against final decisions of ordinary courts on the grounds that their fundamental rights ensured by the

Fundamental Law were violated. This regulation was based on the CC's decision 23/2018. (XII. 28.) which found admissible the complaint of the Hungarian National Bank (MNB) regarding an administrative lawsuit, in which the MNB acted as a public authority. Subsequently, the CC invalidated decisions of ordinary courts, among them Kúria judgments, detrimental to government interests, based on the violation of the right to a fair trial. We find similar CC decisions, of considerable political importance, in both electoral and referendum-related cases. The right of state organs to submit constitutional complaints to the CC against final judicial decisions was only abolished by the 2023 Justice Reform, adopted by the National Assembly to access frozen EU funds.

3. Parliament

(Zsuzsa Kerekes)

In both 2012 and 2014 (links in HU), the government majority passed new regulations concerning the structure and function of Hungary's Parliament, as well as the legal status of its representatives. These changes replaced the previous norms without any multi-party agreement or public discussion. All this required no more than a few hours of parliamentary debate. These norms were further amended about 70 times by the end of 2023.

3.1 A Parliamentary Opposition with Restricted Rights

3.1.1 *Obstruction of Inquiry Committees*

Between 2010 and 2013, the opposition in Parliament initiated the establishment of inquiry committees 46 times. With one sole exception, the government party's majority prevented such establishment with various forms of obstruction. Not a single inquiry committee functioned in Parliament between 2014 and 2023.

3.1.2 *Night Sessions and Legislative Overload*

Frequently, and without reasonable explanation, sensitive political bills of wide-reaching interest were put on the agenda in the late evening, or even nighttime, with the hope that opposition participation in the debate would reach few viewers in television broadcasts, and very likely escape the attention of the press altogether. Similarly, it became a common modus operandi to flood the floor with dozens of bills on a given day of discussion, making substantive debate impossible.

3.1.3 *Sanctions against representatives expressing opinions*

In order to penalize critical voices from the opposition, the Speaker of the Assembly was granted sanctioning power of sanction unknown in international practice. Most commonly, the excuse used was "insult to the dignity of the National Assembly." This is obviously a subjective view, but it also included, for example, a representative expressing their opinion on a placard. Currently, among the Speaker's many sanctioning

powers is the right to deduct as much as six months' pay from a representative's honorarium – without any available true legal recourse. In 2010, the maximum possible such penalty amounted to one-third of one month's pay. Parliament's House Committee (and, since 2020, Fidesz's own Speaker alone) imposed such sanctions 89 times, totaling more than 100,000,000 Forints (about 275,000 USD in 2023), against 102 opposition representatives; some were fined on multiple occasions. This process may be seen as a crass assault on representatives' right to free expression.

3.2 Circumvention of ex ante disclosure and of societal debate; Outsourcing of bill drafting

It has become virtually a standard practice to circumvent the ex ante release prescribed by law as well as the mandated societal debate. Most often, this takes place outside the public eye in undisclosed locations, where government party representatives (who may also be ministers on some occasions) submit bills in the form of representative initiatives requiring no official agreement or societal debate.

3.3 Emptying of the Parliamentary Plenary: The Lawmaking Committee

The 2014 amendment to the 2012 Act on the National Assembly created a Lawmaking Committee as a kind of "supercommittee" designed to deprive the plenary of the right to detailed, public debate on bills. By this time, only the fully integrated text of amendment proposals by the government-party majority of the Committee could reach the plenum, which then would either ratify or reject the new version in toto.

3.4 Martial Lawmaking

The institutionalization of special procedures for debating bills ("Urgent Procedure," "Exceptional Procedure") in 2014 allows the government party representatives to pass laws or even comprehensive codes within 48 hours up to ten times every six months. Martial lawmaking occurred 83 times between 2014 and 2023.

3.5 Omnibus Bills (HU: "Salad Laws")

It has become a standard practice to submit and pass, in a single package, dozens of amendments unrelated to the subject of the given law. This not only makes the effective professional participation of the parliamentary opposition impossible but also hinders the compliance of the affected groups and organizations, as well as the lawful operation of the courts and administrative bodies applying the law (administrative institutions).

3.6 Personalized Legislation

The law on lobbying as a regulated interest representation was repealed in 2010. Normativity was replaced by arbitrary, discretionary lawmaking; in other words, adapting the legal system to political goals of the moment. Hundreds of such bespoke "lexes" are designed to reward those favored by the system, and to punish their opponents. Such laws fall into four main categories:

1. Changing the requirements for state or official positions, governing both appointment and removal;
2. Restricting the competences of institutions that control the government;
3. Creating favorable situations for loyal economic actors, while excluding others;
4. Financial and/or legal crippling of media, the press, NGOs, and businesses considered oppositional, or simply not loyal to the government.

4. President of the Republic

(Zsuzsa Kerekes)

In Hungary, the President of the Republic has a limited sphere of administrative rights; the office is largely symbolic. The single-party Fundamental Law adopted without consensus in 2010 continued the old Constitution's definition: "The President of the Republic embodies the unity of the nation and safeguards the democratic function of the state." The strongest powers of the President include the "political" veto and the constitutional veto against laws passed by Parliament.

4.1 Presidents since 2010

The President of the Republic in Hungary is chosen by the unicameral Parliament for a term of five years. Election may occur with a 2/3 majority of representatives in the first round; if this threshold is not reached, a second round decides between the two candidates receiving the most votes. Here a simple majority ensures election. Each of the three Presidents from 2010 to 2014 won the office exclusively with votes by the governing coalition. Prior to their presidential term, each had held high positions in the upper ranks of Fidesz and various state offices. Of these three people, only one actually completed a presidential term (János Áder). He was also reelected once by the 2/3 parliamentary majority. Pál Schmitt (August 2010 – April 2012) was compelled to resign one-third of the way into his term because of a plagiarism scandal. Katalin Novák (May 2022 – February 2024) similarly had to resign after only one-third of her term, after a scandal regarding a pardon she issued came to light. Tamás Sulyok, elected in February of 2024 (and hitherto the President of the Constitutional Court), was shown to have made false statements about his father regarding serious issues.

4.2 Presidential Veto

Under a rule of law, the head of state's veto functions as a sort of external check against a government that has a majority of lawmakers. With the so-called "political" veto, the President may refer a passed act to Parliament for reconsideration; if there are constitutionality issues, the President may request preliminary norm control from the Constitutional Court. It would be hopeless to expect a President of the

Republic elected by a two-thirds government party majority, and a CC appointed exclusively by government party representatives, to offer protection against unconstitutional laws.

Between 2010 and 2014, the three Presidents used the constitutional veto 11 times, and the "political" veto about 40 times. Among these, there were rarely issues affecting the essence of the constitutional system (such as the 2012 amendment tying the exercise of voting rights to preliminary registration). Presidential approval was granted without concerns to the 12 Fundamental Law amendments dismantling the rule of law, the restructuring of the judiciary, dozens of amendments to the electoral law, laws pushed through Parliament within 48 hours, laws restricting the right to association, the right to strike, religious freedom, and laws establishing decree-based governance unprecedented in EU countries.

4.3 Powers of pardon

Under a rule of law, a presidential veto plays no part in the justice system per se. It is neither a process for legal remedy nor an opportunity for review of binding judicial decisions. This power serves to allow the President to grant pardons, in full or in part, in exceptional individual circumstances meriting special consideration, in harmony with society's general sense of justice. In contrast to many European countries, the President of the Republic in Hungary is not obligated either to give grounds for such a decision or to publish it, though both are possible. Particularly in the case of serious crimes, or in cases where the public has closely followed criminal trials, it is expected in rule-of-law states to publish the pardon and the grounds for its granting. But where there is a 2/3 unfettered supermajority, where both the President with powers of pardon and the countersigning Minister of Justice are picked by the governing party, and where there are discretionary powers to overturn judicial criminal convictions based on political interest, the secretly exercised power of pardon, as we experienced in 2023-2024, raises the possibility of the abuse of this power. In 2023, Katalin Novák granted pardons 40 times, amounting to about 9% of petitions, which is approximately double the average of preceding years. The public was apprised of only a fraction of these decisions, and that only months later, usually by accident. Pardons were granted to Far Right figures accused and convicted of terrorism, to some convicted of violent crimes, and to an abettor of the director of a children's institution convicted of pedophilia. The public revelation of this last decision led to the resignation of Katalin Novák on February 10, 2024; the former Justice Minister Judit Varga, who countersigned the decision, resigned from her parliamentary mandate and withdrew from politics altogether.

5. Towards Governance by Decree

(Ágota Szentes, Imre Vörös)

With the dismantling of the rule of law every element of the functioning of the executive power has been affected. This chapter describes the reshaping of the Government's structure and operations since 2010, as well as the abusive application of special legal regimes, also highlighting some egregious examples of government measures incompatible with the principles of constitutionality.

5.1 Changing the structure of government

After 2010, the already strong position of the Prime Minister was further supported by the Prime Ministry (Miniszterelnökség), which took over the political coordination role of the Prime Minister's Office (Miniszterelnöki Hivatal) and transferred professional coordination to the new Ministry of Public Administration and Justice; and from 2015 by the Cabinet Office of the Prime Minister with somewhat parallel tasks, headed by a minister (Chief of Cabinet) with the right to issue decrees. Likewise, the Prime Minister's powers were strengthened by the extreme centralization of government personnel policy. All these, along with the consolidation of policy sectors into eight ministries instead of the previous average of thirteen, provided an opportunity for the politicization of professional decisions and the upper levels of public administration. The constitutional amendment of May 2010 gave legal form to the previously informal post of Deputy Prime Minister. From 2012, the two Deputy Prime Ministers and especially the State Secretary leading the Prime Ministry, and from 2015, the Chief of Cabinet, wielded political power that extended to the ministers as well. This, combined with the increased influence of the newly formed super ministries, eliminated the equality among ministers that had previously existed, at least in law. The state-secretary system of administration returned; with the State Secretary of the Ministry of Public Administration and Justice having significant personnel influence (veto power) within the government structure.

5.2 Reorganization of the Government's procedural order

Simultaneously with the parliamentary election of the Prime Minister, the government program no longer has to be voted on, unlike before, which has made the

Government politically unaccountable. Since the summer of 2018, it has been legal not to make audio recordings of government meetings (since 2010, the Orbán governments have failed to do so despite a legal requirement), which also hinders the enforcement of the Government's political accountability. The head of government himself exercises political control over the executive by significantly reducing the autonomy of ministers and ministries, which are also pitted against each other. Since 2010, without the assent of the "presidentialized" Prime Minister no major decision can be made within ministries. In addition, the practice of "fractional governance" has emerged, i.e. the governing party – taking advantage of its parliamentary majority and the right of individual members of Government to initiate legislation – can enforce its legislative ideas in Parliament without hindrance, bypassing the obligation to publish draft laws in advance and the administrative and professional consultation.

5.3 The special legal order and its consequences

Dismantling of the system of checks and balances culminated in the government's continuous and virtually complete authorization ensured by special legal orders.

5.3.1 *Legislative basis for the three states of exception underlying the special legal order*

From September 2015 onwards, the threat of mass immigration provided a basis for the proclamation of a state of emergency covering first four, then six counties, and from 2016 the whole country, which, despite the lack of both constitutional basis and factual conditions, has been renewed by the Parliament (with a simple majority) on the proposal of the Government at six-month intervals ever since. Most recently, the Government extended the "state of crisis caused by mass immigration" until September 7, 2024, with Government Decree 47/2024 (III.4).

After the outbreak of the coronavirus pandemic, the basis for invoking the state of exception was doubled with the proclamation of the state of epidemiological danger on March 11, 2020. According to the law on protection against the coronavirus (the first Enabling Act) adopted on March 30, 2020, the Govern-ment is entitled to declare the end of the state of emergency through decree. The Parliament can only decide on the repeal of the law itself, but not on the termination of the underlying state of emergency directly. Based on the combined reading of the two provisions, the National Assembly delegated to the Government the authority to determine the date of repealing the Enabling Act. With this, the Government essentially received an authorization for an indefinite period. On June 16, 2020, the Parliament repealed the law providing the framework for decree legislation, but the following day the

Government declared the state of medical crisis not listed as a case of exceptional legal order in the Fundamental Law, which lasted until 18 June, 2021. On November 3, 2020, the Government again declared a state of epidemiological danger, and on November 10, the Parliament adopted the second Enabling Act, which included its own expiration of 90 days after enactment. On February 8, 2021, the state of danger was declared again, and the Parliament adopted the third Enabling Act. On January 1, 2022, the Parliament extended the effect of the third authorization law until June 1, 2022.

The third basis for the special legal order was the state of war danger introduced with reference to the war in Ukraine, which will also be extended every six months by Parliament starting on 25 May 2022 (most recently until 19 November 2024). In parallel to the migration crisis, the neighboring war is now the basis of the special legal order.

5.3.2 *Redefining the Special Legal Order in the Fundamental Law*

The rules regarding the special legal order were originally scheduled to come into effect on July 1, 2023 by the 9th Constitutional Amendment, but the 10th Constitutional Amendment, adopted on May 24, 2022, following the 2022 elections, advanced this date to November 1, 2022. The Fundamental Law reduced the previous five types of special legal order to three: state of war, state of emergency, state of danger.

The Fundamental Law expands the possibility of imposition of the state of war [Article 49] by the Parliament, allowing its declaration not only in cases of "external armed attack" but also in cases of actions that are "equivalent to an external armed attack in effect," including non-military actions, and the "immediate danger" thereof. During a state of war, the Government will henceforth exercise the rights not specifically defined by the National Assembly and decide on the domestic deployment of the armed forces, which was previously not possible as maintaining internal order was the responsibility of the police.

Of the rules for the state of emergency [Article 50] that can be declared by the National Assembly, the 9th Amendment to the Fundamental Law removed the previous restrictive condition that it could only be declared in the event of armed actions or serious violent acts committed with weapons. Replacing this it introduced a new rule extending the possibility of declaration to include acts aimed at "overthrowing or subverting of the constitutional order" or at "exclusively acquiring power," which are undefined and thus open to interpretation. The previous regulation included the case of unlawful acts massively endangering life and property, with the restriction that the armed forces could only be deployed against

the populace if police intervention proves insufficient. This restriction was deleted by the new regu- lation on the state of emergency, meaning that the military can now be de- ployed against Hungarian citizens in Hungary not only in a state of war, but also in a state of emergency, which can be declared at any time.

The state of danger can be declared not by the National Assembly, but solely by the Government [Article 51]. Its conditions were expanded in the Tenth Amendment to the Fundamental Law – referring to the war in Ukraine – to include a new group of circumstances, namely "ongoing armed conflict in a neighboring country, war situation, or humanitarian catastrophe."

5.3.3 *Characteristics of decree-making under special legal orders*

The rules of special legal orders empower the Government, in connection with the above-mentioned state of crisis or state of danger, to assume decree-making powers replacing parliamentary legislation, including also the authority to restrict fundamental rights. Under the 9th Amendment to the Fundamental Law, the Government, reviving the "decree with the force of law" from the communist era, is obligated only to inform the National Assembly about the decrees it has enacted. The National Assembly can repeal certain decrees; however, the Government can reissue them with the same text "if significant changes in circumstances justify it."

As a common rule for all three types of special legal order, the 9th Amendment to the Fundamental Law stipulates that the authority entitled to declare them can terminate them if the conditions for declaration no longer exist. The state of emergency declared due to the war in Ukraine can therefore be terminated or maintained by the Government – without contribution of the National Assembly – until the end of time. With the 9th Amendment, the technique of decree governance has changed involving a serious substational consequence: previously, the National Assembly extended the effect of Government decrees; however, since the amendment, the Government can now extend the state of danger itself based on the authorizing law, without petitioning for new authorization. The term of this extension had been 30 days, but the 10th Amendment to the Fundamental Law raised it to 180 days.

5.3.4 *Types of abuse of decree-making under special legal orders*

The detailed regulations of the state of immigration crisis had already allowed disproportionately restrictive measures. However, the Government abused its exceptional decree-making authority primarily starting from the introduction of the state of epidemiological danger. Between March 11, 2020, and February 8, 2021, for example, a total of 651 government decrees referring to a state of danger were issued, only some

of which could be associated with the goals of slowing the pandemic and reducing its socio-economic impacts and later the gradual easing of restrictions. Other of these decrees went beyond the principle of transience applied in exceptional legal order and intervened in long-term legal relationships. Some of these decrees, upon the expiration of them, were finalized by the National Assembly into a consolidated version, in the form of laws. Government decrees that fall between these two extremes are those that contain provisions plausibly associated with the state of danger but unjustifiably narrow the scope of beneficiaries or even disproportionately restrict fundamental rights. Also, the decree-making referencing the state of war danger aimed to conceal the consequences of the distribution (amounting to about 2% of GDP) prior to the 2022 elections and the flawed economic policy.

Even those measures aimed at pandemic management could have been enacted under the framework of Disaster Management or Healthcare Act, thus without the Government's exceptional authorization. Despite this fact – or partly citing the mentioned laws as well –, the Government enacted decrees based on the state of epidemiological danger and the Enabling Act, such as those concerning the loan moratorium, exemptions from public burdens on wages, curfews, and the introduction of shopping hours for the elderly.

Regulations related to the state of danger but unreasonably limited in the circle of subjects included, for example, indirect support for sectors important to business circles close to the Government, for example within wine products or tourism. Reference to the state of epidemiological danger allowed for overriding public procurement rules favoring companies close to the Government. The Government acquired respirators for 300 billion forints (c. 850 million USD) most of which have remained largely unused since that time, and are stored at a cost of 15 million forints per month, or donated to foreign countries. Similarly skirting public procurement rules were acquiring vaccines at a cost of 722 billion forints (with no data available on the procurement of Chinese and Russian vaccines), tests, masks, as well as construction and maintenance of pandemic hospitals that ultimately became empty, to name a few issues. Later, public procurement rules were circumvented by referring to the state of war danger. Similarly can be linked to crisis management, but greatly overstepping the necessary fundamental rights restrictions were allowing the Government to use objects of value or real estate owned by state or local government, surveillance of individuals even without suspicion, or allowing the deployment of the defense forces within Hungary during the state of immigration crisis. Also falling into this category are ordering for the army to collaborate in epidemic management and its authorization to use arms in the context of the state of epidemiological danger; as a result, armed soldiers and armored vehicles appeared in the streets and hospitals

for maintaining order and performing logistical tasks, so to speak. Another government decree granted the Minister of Innovation and Technology nearly unlimited access to anyone's personal data. And using the state of war danger as pretext, the Government introduced official prices and quantity restrictions reminiscent of wartime economies on fuels, energy carriers, and certain foodstuffs considered essential.

In addition to these, numerous government decrees were issued to create legal bases for measures unrelated to the state of danger. Among these, the most striking were those enabling state supervision on private companies (see the Kartonpack decree, under which the company's management was immediately relieved by a government commissioner taking over ownership rights) and creation of special economic zones (such as the declaration of the Samsung factory's site as a special economic zone removing territorial autonomy and taxation rights from the local municipality). In the same category are certain government-linked company mergers, exemptions of sectors from competition law, restrictions on access to information of public interest, and Government decrees allowing the invalidation of a semester at higher education institutions, notably the Theatre and Film University, already in a struggle for its autonomy. The declared purpose of the special legal order (the "state of crisis caused by mass immigration") was directly contradicted by the Government decree of April 2023, which placed more than two thousand foreign human traffickers into "reintegration detention," in other words, released them from Hungarian prisons with no genuine intention for keeping track of them.

5.3.5 *Other Government abuses making use of special legal orders*

The Government exploited the political opportunities provided by special legal orders not only through legislation but also through other decisions.

The fact that the Government has not sought to genuinely address the immigration crisis is well reflected in Hungary's refusal to join the common European migration rules and its opposition to the establishment of a common border guard. Government propaganda stirring up fear of migration proved a benefit to the forces of populism, and not only domestically: before the Slovakian elections in September 2023, despite the fence and border closure previously claimed as impenetrable, there was a sudden jump in the number of migrants appearing at the Hungarian-Slovak border, specifically leveraging migration pressure to support Fico's political aims. The Hungarian police, meanwhile, did not detain the illegal migrants headed to Slovakia.

For a long time, the Government has resisted the idea of a common European vaccine procurement, though it is a sensible step in a state of medical crisis, because of the lack of outsourceable extra profit.

While no other EU Member State, and not even Russia, has declared a state of war, the Orbán government introduced and has since maintained the state of war danger, citing the Russian-Ukrainian war. This, however, did not prevent the head of Government from serving Russian political ends with his narrative by rejecting the classification of the invasion of Ukraine as a war at a press conference in December 2023, saying that there was no formal declaration of war between the parties.

5.4 The state of exception becoming "normal"

Despite the absence of mass immigration or a war in Hungary, the Government has maintained the states of danger since 2015, as well as the governance by decree that began with the state of epidemiological danger in 2020. Based on the uninterrupted governmental practice of recent years and the lack of political and social protests, the conclusion can be drawn that the state of exception has become normal. Its legitimacy is not questioned by nearly half of the voters, it has become accepted as a pretext for decrees restricting rights and as a justification for sidelining the National Assembly, the very embodiment of democratic political will. The "sovereignty protection" package of laws passed in December 2023 is the culmination of this process, and the beginning of a new era: severe restrictions on fundamental rights, in this case surveillance, or criminal prosecution based on the vague grounds of sovereignty protection, are now possible regardless of any state of danger. In all of this, the Fundamental Law is not a limit, but a supporting and referable legal framework.

6. Courts and the Justice System

(Zoltán Fleck, Zsuzsa Sándor)

6.1 Removal of the President of the Supreme Court (SC)

Once Fidesz assumed control in 2010, it immediately set about reshaping the powers of judges to meet its own ends. Its first casualty was András Baka, President of the SC at the time. Baka had been nominated for this position in 2009 by then President of the Republic László Sólyom; Parliament, including Fidesz votes, elected him for a term of six years. In 2011 however, the new Fundamental Law renamed the SC to Kúria, a change that did not affect the function, structure, agendas, or the status of SC judges then in office – but the status of the then president and his deputies was revoked. The replacement of András Baka thus took place three and a half years before the end of his term. The true reason for replacing Baka was his criticism of the lawmaking practices of the Government coalition, which limited judges' independence, among other issues. The European Court of Human Rights concluded that the replacement of the chief justice violated the right to a fair trial and freedom of expression. The new President of the Kúria simultaneously became a member of the newly created National Judicial Council (NJC), while Tünde Handó, wife of Fidesz European Parliament member József Szájer, was appointed to head the National Office of the Judiciary (NOJ).

6.2 Compulsory Retirement of Judges

Until December 31 of 2011, judges, prosecutors and notaries could remain in their positions until the age of 70. Changes in the law in 2011 meant that, as of January 1, 2012, judges and public prosecutors would be required to terminate their service at the then general retirement age of 63. Hence, in 2012, 247 judges were suddenly dismissed. (The Government's parliamentary supermajority also amended the Fundamental Law to this effect.) Labor disputes initiated by these court officers brought about a great many rulings, all in favor of the judges.

As a result of the reduction of retirement age, the European Council launched an infringement procedure against Hungary, having deemed such a sudden radical reduction of the retirement age to constitute age discrimination. Concurrently 105 of the judges involved, with the help of Hungarian Helsinki Committee, turned to the European Court of Human Rights in Strasbourg. In Hungary, the Constitutional

Court (CC) also declared the compulsory retirement unconstitutional, but Tünde Handó, president of the NOJ, responded to the CC's decision with a statement that the retired judges would not be reinstated.

The litigation in Strasbourg was crucial in effecting a retraction of compulsory retirement in these cases. But the legal battles were taking place on many fronts. The infringement procedure ran its course at the European Court, which decided that the reduction of the retirement age from 70 to 62 was discriminatory. A further factor was that the judges who had lost their jobs and pay had lodged their complaint with the Strasbourg court fairly quickly, in the summer of 2012. This ultimately proved decisive in forcing the government majority to compensate the judges for their lost wages. Despite this, the government achieved its goal, as after two years of legal wrangling, the courts were decapitated and the former heads of the courts replaced by new ones.

6.3 The Judiciary under the NOJ Presidency of Tünde Handó

Tünde Handó was elected President of the National Office of the Judiciary by a two-thirds parliamentary majority for a term of nine years beginning January 1, 2012.As President of the Office she had a wide authority included the right to designate which court would be the forum for the trial of any case. What is more she could, acting alone, determine all appointments, transfers, replacements, and directorships.

Amnesty International Hungary suggests that a major factor undermining judicial independence during the Handó period was the invalidation of applications for court leadership positions. Ignoring the opinions of judges, Handó not only invalidated a number of such applications but even appointed those who had not submitted applications in the first place. Presidents of the court play crucial roles in the work of judges. For example the case distribution process allowed them to select, for any given case, a judge expected to give the desired verdict.

In May of 2019, the NOJ submitted a motion to Parliament to strip Handó of her position. This motion was rejected by the Government majority without debate, and without examining the unlawful actions of the NOJ president. But in November of 2019, with scandals besetting the judiciary, Parliament removed Tünde Handó from the leadership of the NOJ, simultaneously electing her a CC Justice for a term of 12 years beginning January 1, 2020. With the replacement of the person, the situation hasn't changed much, the administrative leadership has been replaced by loyal people at all levels throughout the country.

6.4 Appointment of a New Kúria President in 2020

The way Varga Zs. András was appointed to the Kúria, by law tailored to his person, has become a custom. The "Lex Zs. Varga" allowed that members of the CC may, upon request, become judges without submitting to the application process required for all others. Using this rule Varga, with seven other CC members, was appointed judge on July 1, 2020, barely three months before being elected President of the Kúria. The same law also allowed for members of the CC, appointed as judges without the application procedure, to immediately become members of the Kúria. Leadership positions of the Kúria, particularly the presidency, had formerly been restricted to individuals with at least five years of judicial service, but on January 1, 2020 the regulation was amended to count time in CC membership as the equivalent of service as judge.

The result here was that a person without any previous experience directing courtroom proceedings became the chief justice of Hungary. It is important to keep in mind that the CC is not part of the ordinary judicial system in Hungary. Its members are elected by a parliament with 2/3 Government party majority since 2010. Varga, a single-party candidate, took his CC position in 2014.

In Varga's case, the situation is further aggravated by the fact that he had served in the office of Prosecutor General Péter Polt for more than 13 years, including nearly 10 years as Deputy Prosecutor. Despite decisive protests of the National Judicial Council, a self-governing body representing nearly 3000 judges, András Zs. Varga became President of the Kúria.

6.5 Imbalanced Justice Reform

Preconditions for receiving EU funding included greater independence for the judiciary, an assurance that the elected National Judicial Council's (NJC) sphere of influence and administration were secure, and free opportunity for judges to turn to EU courts.

The Government was hesitant to meet these conditions, and ultimately did so only partially. In December of 2023 an omnibus bill ("salad law") was ratified by Parliament containing the amendment of the regulations on courts. The NJC jurisdiction was expanded in decisions regarding the selection of ordinary court leadership and the advancement of judges. In December 2023, the European Commission established that conditions were met, while nonetheless maintaining financial restrictions. But the European Parliament considered Hungary's court reform insufficient for the moment, given that the Kúria remained under political

influence, and the changes failed to amend certain elements of political influence: Notably, political appointees remained in their positions.

In exchange for EU funding, the actual benefits for the rule of law remain a matter of perspective, given the lack of change in the real sphere of public law in Hungary. A justice system can only truly deliver a rule of law when supported by other public and specialist entities. But the political loyalties of institutions of public administration pressed into the service of the Government (Parliament, the CC, the Court of Auditors, public prosecutor, etc.) cast serious doubt on the prospects for reining in the Government's disproportionate accumulation of power.

6.5.1 *Problems at the Systemic Level*

The administrative model of the court system in Hungary inherently contains systemic threats to judicial independence. The President of the National Office for the Judiciary (NOJ), the courts' central governing body, is appointed by a two-thirds parliamentary majority at the recommendation of the Prime Minister. The President is overseen by the elected body of judges (NJC), whose sphere of influence was expanded by the most recent amendments. Even so, the NOJ director remains the determining factor in the selection of court leaders, who in turn have a powerful influence in defining the judges' status. Members of the elected National Judicial Council (NJC) must reckon with this, particularly after expiration of their terms. Although the legal independence of district courts has nominally expanded, the NOJ retains a powerful informational upper hand in the preparation of decisions, since the Office has apparatus for this.

6.5.2 *Opportunities for Political Influence*

Legal changes did nothing to alter judicial practice or put an end to political influence in court decisions. Elected by a two-thirds majority in Parliament, the President of the Office is a channel of political influence, just as majority rule is the political force behind election of the President of the Kúria and the Prosecutor General as well. All these positions remain cemented in place. Presidents appointed by the Registrar have far-reaching powers over the judges, allowing for significant political influence in their work conditions and advancement.

On paper, the elected National Judicial Council has seen its position strengthened. However, this change was simultaneous with the election of its new members, a process court leaders, particularly the President of the Kúria, were keen to influence. The new NJC can exercise its expanded powers by consistently taking on conflict with the President of the Office and the President of the Kúria, who is also

a member of the NJC. Hence the institutional structure remains inherently weak to allow for free exercise of the Council's purview.

In place of an expansion of the NJC's powers and rights of formulating opinions, the introduction of their right of consent remains only relative as long as previous regulations that would require consent remain in effect. This type of vacuous expansion of powers is to be seen, for example, in determining judges' advancement: the criteria defined in a ministerial decree prioritize executive practices to judicial positions in evaluating applications. Also, leaders appointed by the Registrar may still be members of the NJC; one general court president in fact became a member of the NJC.

6.5.3 *Considerable Powers for Court Leadership*

The workings of the justice system are determined by a hierarchical order and the affinities of loyalty that evolve within it. Traditionally the Kúria and its President were of central importance. The introduction of a precedent system constituted a significant restriction of judicial interpretation on the part of the Kúria. The president has a role in determining the makeup of the council that will steer judges in courts at all levels, including the most influential ones, to inevitable decisions. Since his appointment, a number of individuals with no judicial experience whatsoever, selected from the apparatus of executive, have facilitated this from their newfound positions in the Kúria.

The new regulations do not allow the President of the Kúria to be reelected, yet this does not weaken the position of the sitting president. Election of a successor still requires a two-thirds parliamentary majority. Failing this, the sitting president remains in office. The same applies to the Prosecutor General.

Case assignment procedures in the Kúria have not changed; the president remains the determining figure. In spite of the legal changes, practice remains unchanged since the normatively determined method of case assignment can be skirted with undefined exceptions. Nothing prevents reference to exceptions or divergence from the norm. In election cases, there is no obligation to apply the automatic procedure as defined.

6.5.4 *The Influence of Judicial Power*

The influence of judicial power in the public and political sphere is made clear by the fact that the Constitutional Court has review powers regarding the constitutionality of final court decisions. Under the rule of law it is normal that constitutionality complaints arise against judicial decisions. But in Hungary the CC, with a politically-

based packed bench, has the power in these cases. The most recent "reform" in May, 2023, in response to EU pressure, ultimately did no more than put an end to the absurdity of allowing even government bodies recourse to the CC with complaints about final decisions, referencing infringement of "fundamental human rights." You mean: the human rights of the government.

The relationship between EU courts and the justice system in Hungary has been defined by the earlier EU sanction of the initiative for a preliminary ruling procedure. Yet the Kúria continues to employ this precedent-type order in spite of amendments to the law on criminal procedure. A further divergence is the lack of judges' freedom of expression. Judges may only attend conferences and professional forums with prior permission from presidents; civil-rights organizations may not take part in the training of the judiciary.

6.6 The Role of the Prosecution Service in Criminal Procedures

6.6.1 *Ensuring Targeted Prosecution*

Through the person of the Prosecutor General (PG), the prosecution service is crucial to the autocracy in Hungary. Elected by the governing party, the term of the PG is de facto for life, owing to the current regulation on electing a successor. Constitutionally Prosecutor General is independent from the executive, but even Parliament could not monitor him. The Fidesz majority elected PG Péter Polt, a former party member and parliamentary candidate, for 9 years (the standard term had previously been 6 years) in 2010, and reelected him in 2019. His mandate then nominally lasts until 2028, but in actuality he will remain in his position, as we saw above, until Parliament assembles a two-thirds majority to elect his successor. In any prosecutor's most critical decisions of bringing and dropping charges, autonomy is not assured since he is subject to instructions throughout the process. The PG has unrestricted and unsupervised powers to shape the prosecutorial investigation process.

The Prosecutor General's loyalty to power explains why there is no investigation of abuses by individuals close to the Government, particularly in issues of corruption. It has become standard practice for the prosecution service to treat information in possible corruption cases regarding individuals close to the PM as accusations, then to halt the investigation at a time favorable to the Government coalition. The "investigation" is closed to the public since the procedure is "in process." Cases in this category include the Öveges Program, the financial dealings of funds of the MNB (Hungarian National Bank), the wealth accumulated by the

Matolcsy family, the corruption issues in the release of the so-called "axe killer" Ramil Safarov, the residency bond matter, the Elios affair, and the case of the Mátra Power Plant.

Abuse of the prosecutor's right to bring indictments also occurs when an investigation begins in response to an accusation, whereupon the public is not notified by virtue of the "in process" excuse, and then the investigation is halted, rendering any further examination impossible. There have been several such cases of irregularities reported by the European Anti-Fraud Office (OLAF), which has provided documentation. There is no actual obligation of the Prosecutor General to report to Parliament; questions of course may be put to the GP, but there are no legal consequences to Parliament's evaluation of the GP's responses.

6.6.2 *Selective Leaks*

There has been recurring suspicion that the prosecution service under Péter Polt has been leaking information about investigations in progress to Government-controlled media, frequently during electoral campaigns. These leaks nearly always involve opposition politicians. Civic monitoring websites have discovered that the prosecution service either does not follow up on accusations involving these leaks, and/or does not initiate proceedings against the perpetrators. The logical conclusion is that this is all taking place deliberately and systematically, with approval from the top.

7. Police

(Ferenc Krémer)

With its victory in 2010, Fidesz promised a new police force, and law and order in the country. Their claim of a new approach was in fact a new reworking of the oldest social role for the police: the notion of a "war on crime" and simultaneously, a recreation of the political control of the institution familiar from communist days. Fidesz, such a conspicuous producer of anticommunist propaganda, has entrusted the post of Interior Minister, tasked with police oversight, to Sándor Pintér since 2010. Pintér became a high-ranking police leader during the communist system.

7.1 Public Policy under Political Control

7.1.1 ***In place of the preexisting police force***, three police forces were created once the government had taken shape in 2010: The Counterterrorism Center (CTC), whose primary task was the protection of Viktor Orbán (Government decree 232/2010, VIII.10), the National Protection Service, for acting against corruption, and the police proper, for general police duties. In 2019, a fourth branch was added, the Directorate General for Policing of Aliens.

7.1.2 ***Following the 2022 elections*** the National Information Center was established, one of whose primary tasks was to support policymaking, a division of the Cabinet Office of the Prime Minister, under the direction of Antal Rogán. Among its first steps were to examine foreign support for opposition parties in the 2022 parliamentary elections.

7.1.3 ***Political policing*** relies partly on law, and partly on the creation of an atmosphere of fear. Facilitating this was the so-called "nullification bill" (2011, XVI), which nullified judgments for acts against the police during the demonstrations of 2006.

7.1.4 ***Terrorism*** was defined as compulsion against the state, rather than inducing fear in the population (Criminal Code, § 314). As a result, the jurisdiction of the police was expanded to allow for foreign intelligence gathering (2016, LVII). At this point the task of the police became, in fact, protection of authority.

7.1.5 ***As a rule, the police force refuses*** to investigate cases involving members of the Orbán family or national and local Fidesz leaders. In those cases when it actually undertakes investigation, with a very few exceptions (likely allowed case-by-case), no evidence of criminal acts is discovered.

7.2 Police Violence

7.2.1 ***The Fidesz Government has boasted that***, in contrast to the events of 2006, its police force does not engage in violence against protestors.

7.2.2 ***The appearance of this has been maintained*** through subcontracting of violence. This was the case, for example, when violence was delegated to football hooligans and security companies against the movement for protection of Budapest's City Park (Városliget), and opposition politicians urging a referendum, and demonstrating in the headquarters of the Media Services and Trust Fund.

7.2.3 ***The police force itself was granted the use of physical force*** at student protests in 2023 at the fence on the Southern border to detain refugees, and at the Office of the PM. For this purpose so-called "border hunter" companies of police were created in 2016. (The historical precedent for such a force dates from 1938.)

7.2.4 ***Police patrols/violence was extended*** to schools in 2020, with the introduction of school guards (2020, LXXIV).

8. Military

(László Kelemen, Zoltán Szenes)

After the fall of communism in 1990, the legal status of professional soldiers was regulated largely in conformity with the Western European concept of the "citizen in uniform," with particular attention to minimizing restrictions on the rights of soldiers, and only applying them in justifiable cases. In 2023, however, the official rhetoric and lawmaking saw a complete turnabout: Onetime citizens in uniform became military individuals deprived of rights, for the most part. Widespread use of military force against the civilian population was now a possibility, in the wake of amendments in law that facilitated the military's ability to operate domestically to maintain order. Professional justification for the dynamic increase in military investment and procurement is out of public oversight.

8.1 Legal Status of Soldiers

8.1.1 *Ban on resignation from service*

Since April of 2020, professional and contract soldiers may not resign from service, as a result of the constantly maintained special legal order régimes – the Covid healthcare state of danger and later the state of danger tied to the war in Ukraine. As things look now, resignation will remain impossible for the foreseeable future since (as also referenced in point 5.4) the special order has become the norm now, without any sign that the Government intends to change it. As a result, members of the military, lacking any possibility of leaving without advocacy by a superior, are compellable to military service in the Hungarian Defense Forces against their will, for an indeterminate period of time. There is no legitimate justification for this.

8.1.2 *Opportunity for terminating military service without explanation or standard procedure*

While voluntary resignation from service is forbidden, since January of 2023 the service of any soldier may be terminated by superiors after two months' notice without explanation, per a state-of-danger Government decree that formally references the war in Ukraine. Having reached the age of 45 and served for at least 25 years, they become eligible for a sort of annuity called "service allowance" depending on their age and previous payment. But the minister ultimately has discretionary

powers to grant such an allowance or not. Service status, even independently of these conditions, may be terminated with the simple declaration of a commander, after a two months' administrative leave, if the individual is "not planned for another position." In that case, or when the minister denies the service allowance, the Defense Forces grants no financial support beyond a few months' severance pay. This procedure gives no guarantee that a members of the military will be dismissed on reliable, rational and justifiable criteria, and not arbitrarily, due to a personal or political retribution, with the decision about their further livelihood.

8.1.3 *General powers in a decree for restricting human and employee rights*

Another Government decree of state of danger in June 2023 with reference to the war in Ukraine, being rather sloppily worded, and outside the framework of a formal amendment, reshaped the legal guarantees contained in the law on the legal status of soldiers and others. Without mentioning concrete conditions, the new regulation grants commanders, in nonspecific language, to restrict the rights of soldiers. While the law itself states that the legal framework of service depends on good faith and honor in the mutual exercise of rights and performance of responsibilities, and forbids behavior restricting the rights and rightful interests of another, the Government decree declares that "behavior in conformity with military order and the maintaining of discipline in necessary measure is not considered an infringement of rights or rightful interests," and adds that the military readiness of the Defense Forces, as well as the demands of the war in Ukraine are similar deciding factors. This, as well as a number of other provisions in the decree, allows much room for arbitrary measures by commanders. In a given situation, it creates a legal framework to support ruthless, inhumane, or humiliating treatment of individuals or groups through informal punishments and negative discrimination. As a result of the decree, certain employee rights guaranteed by law – particularly working hours, rest time, relief from service, and the extent and compensation for overtime may be skirted to a large degree.

8.1.4 *Prohibition of military trade union activity*

A constitutional amendment in effect since December 2023 forbade the operation of trade unions protecting the rights of professional soldiers, despite earlier decisions of the European Court of Human Rights that expressly ruled in favor of such union activity. Thus, the Hungarian Military Trade Union, which had operated since the fall of communism, ceased its previous activities, and now continues to operate with limited rights, without trade union certification, under the name "Defense Forces Advocacy Organization."

8.1.5 *Final dissolution of statute level legislation*

Another element of the aforementioned constitutional amendment of December 2023 moved the powers of regulating military service status, including the restriction of basic rights completely, from the jurisdiction of the National Assembly to that of the Government and the defense minister, even under the normal legal régime. Such a setup allows for further undermining of legal guarantees for the long term by ending, once and for all, the public transparency and public oversight of military service status that could be ensured to some extent in the parliamentary process. After submitting a bill to the National Assembly allowing for the transition to a decree level legislation the Government issued a decree to replace the current military service law, finalizing the deprivation of rights of military personnel.

8.2 Civil, Parliamentary, and Public Oversight of the Defense Forces

8.2.1 *Deployment of the Defense Forces to Maintain Domestic Order*

To all appearances, Hungary provides for civil oversight of defense forces in all aspects, with civilian bodies carrying out its direction and control. The primary body of civilian control is the Government. This is a standard approach on paper, but has little value when parliamentary oversight of the Government has ceased, and when parliamentary and civil publicity is extremely restricted. Particularly important for protection of civil rights would be that the defense forces' powers to use weapons and similar extraordinary measures against the populace are exceptional, limited to strictly determined conditions, and truly and effectively overseen by parliament. However, the autocratic direction taken by Hungarian legislation has put an end precisely to these conditions.

In 2015, the Government introduced a state of danger, referencing so-called mass migration, that marked the beginning of an expansion of the defense forces' powers in domestic policing functions, including rights to use weapons and other instruments of force. This process has accelerated and expanded since 2020, the Government declared a state of danger regarding the Covid pandemic. The state of emergency in effect since then (with various justifications) has opened the door for several Government provisions that allow the Defense Forces to use weapons and other policing measures. In November of 2022, the parliamentary state of emergency was expanded to include the legally nebulous "agitation," and the previous criterion of "serious violent acts" was changed so that "serious illegal acts" could trigger the enforcement of the state of emergency, including the use of arms and

other policing measures by the Defense Forces. If this were not enough, since July 2023 the Government has acquired the power to order such measures without introducing a special legal régime, by invoking the new category of a "coordinated defensive activity." We should mention that, despite the extensive legal autonomy granted to the military, armed engagement with civilians has as yet not been undertaken by the Defense Forces, and other coercive police actions have been performed only in a few cases. But we must also understand that the régime has created the chance for itself to take such steps at any time within a loose legal framework that remains fundamentally free of controls.

8.2.2 *Transparency of Military Development and Procurements*

Once the commonly perceived low point of 2014 had based, Hungary's Government embarked on a dynamic expansion of the defense budget, with particular focus on funds for military development. (Those funds, initially 256 billion forints, or 0.9% of GDP, are by 2024 expected to reach 1800 billion forints, or 2.1% of GDP.) In its communications, the Government in 2017 had announced the "Zrínyi 2026" program, a 10-year plan for defense and military development – but the substance of this program remains unknown to the majority of its participants, or to the public at large; these days, there is little talk of Zrínyi 2026, and instead a constant development is mentioned only. Still, there have been no expert debates, or social or political discussions about the objectives, priorities, or direction of the investments and procurements currently in progress, nor has information about them been communicated to the public. The parliamentary defense and law enforcement committee in charge formally approves the exemption of items of planned defense development from the public procurement procedures, but that is not enough to ensure the normally expected transparency, even in a narrow circle.

It is worth mentioning that, since the growth in funding, a number of businesspersons close to the highest circles of the Government have appeared among those in charge of military development and procurement, as well as among other top-level leadership in the Ministry of Defense. The dealings and execution of military procurement have been outsourced from the Ministry of Defense. For this purpose, in December of 2019 the Defense Procurement Agency (DPA) was created, ostensibly a business but in fact 100% state owned and carrying out national operations. Without approval of the Agency, it is impossible to continue the initiated procurement procedures, and approval of the planned procurement is also required by the Defense Council, led by the PM. Once this latter approval is obtained, the DPA has discretionary jurisdiction to determine whether itself or another body will continue the procurement, and in what manner. All of this means it is impossible to

determine who is the true decisionmaker in any given defense procurement; there is also no transparency regarding whether the primary considerations and needs are professional military ones, or due to other priorities (as for example to win the loyalty of certain foreign countries or to provide advantages to business circles close to the Government.)

9. Intelligence Services and National Security

(József Gulyás)

9.1 Re-regulated Intelligence Services without Oversight

Following the administrative change in Hungary in 2010, the majority party, exercising its power to redefine constitutional structures and laws without consulting political, expert, or advocacy groups, assumed control of the intelligence sector. Over time, it became evident that national security services were being exploited for political purposes. The Prime Minister frequently reorganized the secret services and their oversight mechanisms starting in 2010, ensuring that he became the sole reference point for these organizations.

Presently, nine entities are authorized to determine the methods and manner of covert information collection. In addition to the four secret services, these include the police, the Counterterrorism Centre, the National Protective Service, the National Tax and Customs Administration, and the Prosecutor General's office.

9.1.1 ***The legislation governing the operation of the national security services*** dates back to 1995. Amending this law required a two-thirds supermajority or, depending on the drafters' intention, consultation leading to consensus. After the 2010 electoral victory, the governing majority met this requirement and proceeded to reshape the national security domain and jurisdiction on nearly 60 occasions without prior political consultation.

9.1.2 ***The legal authority of the intelligence services*** to conduct investigations and surveillance was expanded.

9.1.3 ***The role of the courts*** in authorizing clandestine information gathering has been rendered purely formal, requiring only "outside authorization."

9.1.4 ***Funding for intelligence services*** has significantly increased in recent years, beyond all oversight. The efficient use of public funds cannot be verified, and development and procurement processes remain completely opaque.

9.1.5 ***Although regulations still provide for civil oversight*** of the intelligence services, it has been profoundly restricted. The National Security Council (NSC) in Parliament has had no effective oversight powers for at least a decade. The information provided to the NSC by national security services

has been of minimal value. Its sessions are mere formalities, as government party representatives may, and generally do, block the examination of all cases, rendering oversight impossible. There are no rule-of-law checks on the national security services.

9.1.6 ***The public revelation of individuals surveilled using Pegasus spyware*** has disclosed that the software was used against persons unrelated to acts of terror, preparations for such acts, or other extremely serious crimes. This remains the case several years after the scandal broke. Justification for the disproportionate use of surveillance software, originally intended for "national security threats," against civilians and journalists critical of the government has never been provided.

9.1.7 ***Since the mid-2010s, civil society organizations considered dangerous by the government*** but operating entirely within the law have been regularly declared national security risks. Various government-party politicians, including the Prime Minister, have been involved in this. Public political condemnation was often followed by the politically directed use of various intelligence service techniques.

9.1.8 ***At the beginning of the new Orbán administration in 2022***, the domestic national security services, except for the Information Agency (formerly part of the Ministry of Trade and Foreign Affairs and responsible for intelligence gathering), were consolidated under the direction of Antal Rogán, Minister directing the Cabinet Office of the Prime Minister.

9.1.9 ***Additionally placed under Rogán was the National Information Centre***, a former secret service organization with lesser jurisdiction and a "different" structure, which has been strengthened and transformed into a sort of "super service" with exceptional authority.

9.1.10 ***Rogán's personal portfolio has expanded significantly.*** Beyond his key role in drafting administrative decisions, he also heads government communications and is widely believed to be in charge of government party propaganda.

9.1.11 ***Under Rogán, regulations are being prepared*** that allow for unlimited control over citizens' personal data and digital services. The Chinese firm Huawei plays a leading role in Hungary's digitalization efforts, with the personal collaboration of the Prime Minister.

9.1.12 ***In the new government term***, national security services are increasingly yielding to "hands-on" direction and implementing propaganda goals, such as the "foreign influence" campaign leading up to the 2022 parliamentary elections, characterized by a skewed intelligence service report that was widely publicized.

9.1.13 ***Recent changes to staffing and organization*** have augmented the direct control powers of the Prime Minister and the Minister in charge of the Cabinet Office of the Prime Minister.

9.1.14 ***At the end of 2023, the "Sovereignty Protection" law,*** modeled after the legislative practices of the Russian regime, was enacted. The head of the newly established Sovereignty Protection Office promptly clarified that the office's mandate would not encompass addressing Russian or Chinese influence and expansionist ambitions. Instead, the focus would be on critics of the regime, potential challengers, and advocates of the rule of law. According to government rhetoric, these individuals are frequently depicted as being in the service of the West, George Soros, or Brussels.

The new office is authorized to request and receive information from the intelligence services for its investigations. Despite the European Commission initiating infringement proceedings in February of this year due to the Sovereignty Protection Act, this has not perturbed the Hungarian government or the new office. Notably, the Sovereignty Protection Office commenced an investigative procedure against two members of the Anti-Corruption Working Group, which is endorsed by the government. The entities under investigation are Átlátszó, an investigative online newspaper, and Transparency International Hungary. This action was taken just prior to Hungary assuming the rotating presidency of the Council of the European Union on July 1, 2024.

The national security services are not primarily concerned with Hungary's independence or sovereignty as defined by the extant framework of alliances, or the security of its citizens. Instead, the primary goal is to steer the will of voters using billions of forints of taxpayers' money to construct an autocracy, exploiting the gradual deconstruction of rule-of-law controls.

10. Central Oversight Agencies

(Gábor Gadó)

The anti-democratic turn carried out by Fidesz in the wake of the 2010 elections did not spare central oversight agencies of the state. Institutions whose putative tasks included oversight of the workings of government, or indeed had such oversight as their main objective, became pliant tools in the hands of the governing supermajority.

10.1 State Audit Office (SAO, Állami Számvevőszék)

10.1.1 ***Since 2010***, successive presidents of the SAO have been nominated and appointed by the Fidesz-KDNP coalition. (Although the President of the SAO is proposed by the parliamentary standing committee dealing with issues pertaining to the SAO, a stable government majority in this body is guaranteed.)

10.1.2 ***The Court of Justice of the European Union*** ruled that a 2017 law passed by Hungary's National Assembly, following a Russian model, to ensure the transparency of NGOs involved multiple infringements of the Charter of Fundamental Rights of the European Union. As a result, in 2021 the National Assembly was forced to repeal the law in question. Yet a regulation adopted simultaneously extended the purview of the SAO to include all NGOs whose total assets exceed 20 million HUF, even if they receive no public funding. This law clearly contravenes Article 43 of the Fundamental Law, according to which the SAO is charged with overseeing only the implementation of the central budget, the administration of public finances, the use of funds from public finances, and the management of national assets.

10.1.3 ***The authorization of the SAO*** to audit the financing and operation of political parties creates opportunities for political abuse, which the governing majority has not failed to exploit. Opposition parties are not entitled to seek judicial remedy in the face of findings by the SAO. Judicial review is only possible in reference to decisions of the State Treasury based on indications of the SAO, to withhold subsidies or levy severe penalties when such sanctions are already being implemented. Meanwhile the SAO,

which is charged with auditing campaign financing, routinely finds no fault with the operation of NGOs campaigning on behalf of the governing parties that are financed from public funds or rely on subsidies.

In sum, we can conclude that the operation of the SAO displays such a fundamental conflation of roles as to make the rule of law illusory.

10.2 Fiscal Council

There is nothing objectionable about the task of the Fiscal Council (FC) as defined in the Fundamental Law, in and of itself: namely, to formulate a position on the draft bill on the central budget. Yet there is an issue with the provision according to which the FC must have three members, one member nominated by the Hungarian National Bank, another by the State Audit Office, and a President appointed for six years by the President of the Republic. This means that government appointees are entrusted with decisions regarding the composition of the FC.

The FC does not merely examine and assess the draft bill on the central budget, since adoption of the bill is actually conditional on its prior endorsement by the FC. This provision amounts to an unacceptable constraint on the legislative power of the National Assembly and can only be viewed as a security measure to ensure that the currently governing majority retains control even in the case of an election victory by the current opposition. A rejection of the proposed budget by the FC cannot be overruled by elected members of the National Assembly. Were the opposition parties to prevail in future elections, the appointees of the current Fidesz-KDNP alliance could topple a new government that proposed to depart from the path established by Orbán.

A governing party or coalition with a simple parliamentary majority would not be able to change the legal provisions pertaining to the FC, since Article 44 of the Fundamental Law stipulates that the operation of the FC is regulated by a law whose adoption and change requires a two-thirds supermajority.

10.3 The Media Council of the National Media and Infocommunications Authority (Media Council)

10.3.1 ***The Media Council*** is a body affiliated with the National Media and Infocommunications Authority (NMIA) and overseen by the National Assembly, with an independent purview of its own. Its president and four members are elected by the National Assembly for nine years. There can thus

be no doubt that the governing majority appoints all members of the Media Council. Moreover, political control exercised through the Media Council extends over a period exceeding two parliamentary cycles. During the nine-year mandate of the Media Council, changes in the balance of power among parties cannot alter its composition.

10.3.2 ***The most important legally mandated task of the Media Council*** is to "oversee and ensure" the implementation of media freedom. Contrary to this declaration, the actual practice of the Media Council and the Authority shows that they have become the institutional guarantees of restrictions imposed on the freedom of speech and media over the past fourteen years. In the event of a future restoration of the rule of law, a rethinking of the justification for these organizations would be in order. It is certainly arguable that political freedoms and media pluralism would be better safeguarded through regulated competition and judicial control, without the Media Council and the NMIA.

10.4 Hungarian Competition Authority (HCA)

10.4.1 ***Since the President of the Republic*** can appoint only persons proposed by the head of government, the Prime Minister ultimately decides who will be the president of the HCA. This provision would be unobjectionable if the past decade and a half had not shown that the Prime Minister selects nominees who are ready to comply with political expectations.

10.4.2 ***In 2013, the National Assembly*** changed the existing law on the HCA in such a way as to ensure that company mergers that the cabinet declares to be of "strategic national importance" can be exempted by government decree from control of the HCA. This legal provision allows the government to exempt business enterprises favored by the governing parties from competition control. In the face of such decisions by the government, which take the form of statutory provisions, other market actors have no recourse to judicial remedy.

10.5 National Tax and Customs Administration (NTCA)

10.5.1 ***As a "central office,"*** the National Tax and Customs Administration is led by a minister appointed by government decree. The president of the NTCA, an undersecretary in charge of this area, "reports" to the Minister of Finance. The fact that the NTCA operates under direct political control and also

has investigative authority entails risks for all organizations ("tax subjects") that for some reason or other find themselves in the crosshairs of the government.

10.5.2 ***It appears problematic*** that the NTCA staff is eligible to receive various personal benefits and state subsidies to cover institutional accumulation expenses if the NTCA meets revenue targets set by the annual budget bill. This raises the risk of the NTCA subordinating concerns of legality to financial incentives. (See Act CXXII of 2010, § 1, third paragraph.)

10.6 Supervisory Authority for Regulated Activities (SARA, Szabályozott Tevékenységek Felügyeleti Hatósága)

10.6.1 ***The Authority is a budgetary organ*** whose budget enjoys special protection as an "independent item in the budget chapter allocated to the National Assembly" (Act XXXII of 2021). The president of the authority is appointed by the President of the Republic on the recommendation of the Prime Minister for nine years. This means that a Fidesz appointee would retain his office even in the event of an election win by the opposition.

10.6.2 ***The Authority supervises business activities*** most frequently associated with financial and political corruption. The Authority's purview includes, among other things, oversight of the activities of independent judicial officers, authorizing the organization of gambling, and granting concessions for the retail sale of tobacco products and the operation of casinos. It is also the Authority's task to register organizations issuing information security certifications to organizations that provide "post-quantum cryptography applications" to protect IT systems.

11. Anti-corruption Institutions

(summary based on the 2023 annual report issued by Transparency International and K-Monitor)

11.1 New institutions founded in the wake of intervention by the EU (after 2022)

In the second half of 2022, in response to the various proceedings launched by the EU to address rule of law concerns in Hungary, the government modified the framework of institutions responsible for fighting corruption. Among other bodies, the Integrity Authority (Integritás Hatóság) and the Anti-Corruption Working Group (Korrupcióellenes munkacsoport, KEMCS) were formed.

11.1.1 *Integrity Authority*

11.1.1.1 Activities

The Authority:

- is authorized to initiate procedures by the Police, the National Tax and Customs Administration, and other state agencies in response to irregularities in the use of EU funds;
- writes reports on the use of EU subsidies, for instance in relation to the system of financial declarations, the viability of the public procurement system, and the over-all state of integrity;
- its 2023 budget was 17 billion HUF, while its 2024 expenditure was 19 billion HUF;
- the average headcount in 2023 was 62, which may increase in 2024 to 150;
- in the first year of its operation, the Authority received 186 reports and investigated 21 cases through December 2023, involving a total value of 315 million EUR (approximately 123 billion HUF).

11.1.1.2 Constraints

The Authority:

- cannot levy sanctions;
- its operations are dependent on the cooperation of the other oversight bodies of the state, which are led by government appointees. For the most part,

its authorization is restricted to initiating procedures to be completed by other agencies in the event of irregularities;

- out of nearly fifty recommendations presented in the Integrity Authority's annual analytic integrity report, the government endorsed only a dozen, while disagreeing with twenty-three recommendations or refusing to adopt the requisite measures;
    - the rejected recommendations included a methodical procedure for comparing public procurement prices and market prices and the public disclosure of the procedures for handling irregularities in the use of EU funds.

11.1.2 *Anti-Corruption Working Group (ACWG)*

11.1.2.1 Activities

The Working Group:

- began its operation in December 2022;
- ten out of twenty-one members are delegated by state agencies, another ten represent NGOs;
- its members formed four subsidiary working groups in charge of the following areas: (1) public procurement, (2) EU and national subsidies, (3) transparency, availability of data of public interest, (4) criminal law and laws regulating criminal proceedings.

11.1.2.2 Constraints

The Working Group:

- has no independent purview;
- the scope of its activities is quite narrow:
    - it cannot investigate on the basis of specific suspicions of corruption;
    - it cannot request information to determine whether the authorities charged with fighting irregularities perform their tasks in an appropriate manner;
    - the tasks pertaining to the struggle against corruption are not coordinated by the ACWG.
- was not allowed to participate in the development of the government's anti-corruption strategy, and was granted only a perfunctory role in evaluating the draft of the government strategy;

- the government has granted the ACWG no opportunity for consultation or comment in relation to legislative acts of importance in combatting corruption, such as the law protecting whistleblowers, the system of personal financial declarations, or the availability of data of public interest;
- the government did not support most recommendations formulated by NGO-affiliated members of the working group in the 2022 annual report;
- of the NGO-affiliated members of the ACWG, those representing Atlatszo.hu, K-Monitor, and Transparency International Hungary did not endorse the 2022 and 2023 annual reports because they found both reports insufficient for addressing the underlying problems responsible for corruption.

11.1.3 *Directorate for Internal Control and Integrity*

11.1.3.1 Activities

The Directorate:

- was founded in late 2022;
- its objective is to identify and manage personal situations that are incompatible with the appropriate handling of EU funds.

11.1.3.2 Constraints

The Directorate:

- in the past eighteen months has not published a single report on its activities;
- it is not known how many conflicts of interest the Directorate has uncovered;
- the regulations pertaining to the operation of the Directorate do not safeguard access to all databases required for substantial and in-depth investigations.

11.2 Institutional framework prior to the intervention of the EU (pre-2022)

11.2.1 *National Protective Service (NPS)*

11.2.1.1 Activities

The NPS is:

- a police agency with special tasks, founded in 2010;

- in charge of coordinating the fight against corruption;
- its designated area of activity, which initially continued to expand, comprised crime prevention and integrity testing in various branches of state power;
- one of its high-profile tasks was to combat corruption in health services (esp. under-the-table "gratuity payments"):
    - since March 2021, the NPS has conducted investigations in 105 illegal medical gratuity cases involving 250 individuals and reported 19 cases to the Prosecutor's Office in 2023.

11.2.1.2 Constraints

The NPS:

- as a result of the reorganization of the government following the 2022 elections, the bodies operating under the auspices of the Ministry of the Interior no longer fall under the purview of the NPS;
- its scope of activity has shrunk, as some of its tasks have been reassigned to the Constitution Protection Office, which operates under the auspices of the Prime Ministerial Cabinet Office and has taken over the integrity testing previously conducted by the NPS as well as the investigation of criminal acts involving corruption.

11.3 The lack of institutional checks on grand corruption

11.3.1 *The division of labor among the four institutions reviewed above*

- the regime entails a reassignment of the tasks involved in combatting corruption:
    - a curbing of the authority of the NPS has resulted in a restriction of its activities to fighting petty corruption;
    - combatting systematic, grand corruption orchestrated from above is now among the tasks of the Constitution Protection Office, which is mainly a national security and secret service institution, whereas the government ignores most recommendations made by the newly founded anti-corruption institutions in relation to grand corruption.

11.3.2 *The consequences of no checks on grand corruption: three examples*

- **conflicts of interest in so-called "foundations exercising public task" (KEKVA):**
  - political figures such as mayors and ministers and other leading officers continue to serve as members of the supervisory boards and the boards of trustees of KEKVAs;
  - although the boards of trustees of KEKVAs no longer include members of the government, the relevant legal provisions still do not rule out a role played by prominent political figures in the bodies controlling and supervising such foundations.

- **challenges facing the system of public procurements:**
  - the level of state-driven concentration of economic power, independent of cartel behavior, is extremely high, to the point where the market position of some actors close to the government has become incontestable in the past few years;
  - in public procurement procedures in the spheres of communication and information technology, the framework agreements reached via the mediation of central bodies in charge of procurement–such as the National Communications Authority (Nemzeti Kommunikációs Hivatal) and the Digital Public Procurement Agency (Digitális Közbeszerzési Ügynökség)–have allowed certain economic actors to attain leading market positions, blocking other actors' access to the market;
  - central bodies in charge of public procurement procedures do not conduct efficiency analyses involving comparison with current market prices;
  - procedures conducted in accordance with §115 of the public procurement law can severely restrict competition, and are in many cases apt to raise the suspicion that these public procurement procedures are in truth "rigged" from above;
  - small and medium-sized enterprises that cannot provide the contracting authority in a given public procurement procedure with supporting references face barriers to entry.

- **a substantial increase in the number of private equity funds that allow concealment of the real owner of assets:**

- following an amendment of the relevant law, the registry identifying the real owners of private equity funds is no longer accessible to citizens starting with 2024 (although it would not provide a complete picture of real owners even if it was accessible);
- recent years have seen the entry of private equity funds to the public procurement market (winning tenders totalling 608 billion HUF, amounting to 4.8 percent of the total value of all public procurement procedures). This violates Article 39 Paragraph 4 of the Fundamental Law, which declares that transparency and integrity of the public sphere are to be maintained in the handling of public funds and national assets;
- among the managers of private equity funds one finds actors with ties to key figures of the government;
- another way to hide assets is to use preference shares, whose owners are eligible to receive larger dividends than other shareholders.

11.3.3 *Sabotaging of international control: the European Public Prosecutor's Office*

- the European Public Prosecutor's Office is an independent office of the EU which is responsible for investigating and prosecuting various types of fraud affecting the EU budget and other crimes that damage the economic interests of the EU;
- twenty-two member states participate in the European Public Prosecutor's Office, with accession by Sweden and Poland underway. With Denmark and Ireland having opt-outs from judicial cooperation, Hungary is the sole EU member state that categorically rejects participation in the European Public Prosecutor's Office, citing the sovereign authority of its national prosecution service;
- by rejecting participation in the European Public Prosecutor's Office, the government can ensure that the national prosecution service, which lacks autonomy in relation to the executive branch, can formally abide by EU requirements (for instance, the prosecutor's office investigates 75 percent of referrals by the European Anti-Fraud Office [OLAF], a record that contrasts sharply with the 34 percent average rate of investigation in the EU), while investigation is avoided in politically sensitive cases (for example, the case of ELIOS, a company owned by István Tiborcz, the son-in-law of Viktor Orbán).

12. Local Self-Governments

(Ilona Kovács Pálné)

The Hungarian system of local self-government is a shadow of its former self, when compared with its significance in public policy and the political sphere when created by law in 1990, just after the fall of state socialism.

In fact, the evaluations provided by a number of international organizations (European Council Congress of Local and Regional Authorities Monitoring Committee, 2013, 2021; the Council of Europe LAI 2021, RAI 2018; EQGI; the Venice Commission, CLARE, and others), and comparative specialist literature have determined that the dramatic changes occurred in 2010. It is important to stress that the reforms in local administration were not the result of crises in the economic, public health, or security spheres (which at most allowed change to be more visible and rapid), but were elements of a paradigm change in the approach to territorial public governance. The essence of this conscious, complete transformation of the local governance system was the change in its model, that is to say local self-government replaced by the local state. As early as the Fundamental Law that took effect in 2012, the stage was set for the termination of public policy and civil autonomy, instead the establishment of state-centered territorial government, with total centralization and appropriation by the state. By its changes to public law, public services, jurisdiction and funding, and ad hoc initiatives and decisions, the Government deliberately ended local autonomy. Many crucial elements of today's local system fail to meet even the minimal standard of the European Charter of Local Self-Government.

Here we shall list the main points of this deliberately imposed process, generally skipping over the mountain of specific facts and new regulations.

12.1 ***The Fundamental Law which went into force in 2012*** made profound changes to the status of territorial governance: no longer does it regard local self-governance as a fundamental right of the locality; instead, self-government is not a forum for participation and representation of its citizens, but the discharger of public functions as part of the executive power of a unitary state. The state and local governments were now required to cooperate. Government offices located in each county were granted constitutional status, which formed the basis for state dominance in territorial governance. The Fundamental Law makes no provision for localities to turn to ordinary

courts or to the Constitutional Court. Supervision of local governments was considerably intensified.

12.2 ***Amendments to the election system*** on the national and local levels subjugated local self-governments to centralized party policy. County party lists were abolished, making it impossible to undertake local advocacy within parties. At the same time, these changes considerably reduced chances of winning seats on lists for civil and independent candidates in all counties and larger localities. The number of local representatives was halved.

12.3 ***Regulation of referenda at the local level,*** which reduced their influence, validity, and subject matter virtually eliminated any chance for direct democracy to function. As a result, the frequency of local referendums fell significantly.

12.4 ***Channels for reconciliation of interests*** among localities and the Government were closed off. The introduced conflict of interest between National Assembly and mayoral positions forced mayors out of Parliament; consultation with national associations of local governments became merely formal, while lawmakers often ignored reconciliation orders required by law.

12.5 ***The new law on self-government*** broke with the previous model based on broad responsibilities. In matters of mission and scope, Hungary's local self-government system violates the European Charter of Local Self-Government. At this point, Hungary's self-governing territories do little to deal with critical local public issues. The vast majority of public services handled by localities have been taken over by the state (education, most health services, many social services, community public utilities, and administrative duties). This process continues even today. Not only the institutions themselves, but also their administrative support structures have seen significant cutbacks, particularly in less-populated areas.

12.6 ***Even in dealing with their own tasks***, the local administrations have very little room for deliberation. In short, then, the members of the local society have lost the right to make decisions affecting their own lives. At the same time, surveys (including Eurobarometer) have demonstrated that trust in institutions is still highest at the level of self-government.

12.7 ***Development policy and the use of EU cohesion funding*** has been thoroughly centralized even in spite of the fact that county self-governments, on paper, receive competence in TOP (Territorial and Settlement Development Operative Program) funding. (This is essentially their task only which is hence

contrary to the Charter.) The centralized system is a hotbed of corruption and the political and discriminatory distribution of funding. It is clearly demonstrable that both the capital and other opposition-led self-governments have received considerably less EU funding. Locals receiving the designation of so-called "priority investments," whose number in recent years has exploded from several dozen to over 1000, have meant the elimination of self-governments' funding for development and investment aims.

12.8 ***The financing system for self-government*** reflects more than just state centralization: it indicates a suspicion of local governments, and also an intention to foist responsibility for the quality of its services on to them. Local governments' support from the budget had fallen from 13% to 6% as early as 2013; the numbers have worsened since then. So-called task financing has further restricted their space of movement, and indeed fails to cover their required expenses. Local tax revenue is fairly slim, so much so that many settlements have none at all. There is strict state supervision of their financials and credit assumptions.

12.9 ***Ownership structures*** have been drastically re-formed by Government confiscation of ownership (or management rights over infrastructure) in most public services nationalized by state. States of emergency have further delegated remaining local properties to Government control. Declaration of a "special economic zone" deprives a local self-government of its property rights, and of the right to collect local taxes regarding a given economic facility.

12.10 ***Government under states of emergency*** has become a constant since Covid, giving an exceptionally broad scope to the Government, including the power of government by decree even over localities. The Government continues to abuse this power by creating fundamental regulations allowing it to keep these processes from the eyes of Parliament, and of the populace itself.

13. Freedom of Information

(Zsuzsa Kerekes)

13.1 Before 2010

In 1992, Hungary became the 12th country in the world, and the first in East Central Europe, to codify the right to access public sector information – freedom of information, in other words. (It is a peculiarity of the laws in Hungary that freedom of information and protection of personal data were united under one law.) Between 1992 and 2010, about a dozen regulations were created that expanded the scope and guarantees of this right. (To mention the most important: 1995, authorities' discretionary right to secrecy was abolished and an independent information ombudsman was elected to protect these two rights; in 2003 the so-called glass pocket law was adopted, abolishing the protection of business secrets as applied to public funds; in the same year, requiring the mandatory publication of data related to public finances; in 2005 the law on freedom of electronic information was ratified, requiring the entire public sector to provide broad, automatic transparency; in the same year personal data of individuals in public posts were made public; in 2008 decisions of institutions of public administration were made public, as well as state leaders' personal wealth and tax returns; in 2009, details of the remuneration of corporation executives was also made public.)

Following the change of government in 2010, the freedom of information did not experience the kind of frontal attack from the Government as other constitutional rights. The freedom of information is not one of the classic freedoms, since it does not compel state institutions to restraint, but instead it obliges state bodies to take active measures, requiring continuous and systematic data provision. For this reason, its restriction involves methods that are far less obvious.

13.2 The End of the Independent Ombudsman

In the summer of 2011, Government party representatives, without preliminary consultation with experts, and after a mere five days of discussion, ratified the new Information Law, which subsequently was amended six times before taking effect in January of 2012, nullifying the previous law. The obvious goal of the new law was the liquidation of the institution of an independent information ombudsman. This

procedure was subsequently found to be illegal by the EU Court of Justice. But by the time of the ruling (2014), the National Authority for Data Protection and Freedom of Information (NAIH), which had been operating for two years, could not be abolished, nor could the ombudsman system be reinstated. According to the new Information Act, the president of NAIH is no longer elected by the Parliament but appointed by the President of the Republic on the recommendation of the Prime Minister for a term of nine years instead of six.

13.3 Weakening of Constitutional Court Protections

Before 2012, one important guarantee of the freedom of information was that any individual, even one without personal involvement in the issue, could petition the CC for an ex post review and nullification of an unconstitutional law. The significance of this is evident in the fact that, between 1990 and 2012, 80% of cases objecting to freedom of information violations decided by the CC were initiated as an actio popularis. Further restrictions stem from the fact that while the Information Ombudsman had had the right to request constitutional review from the CC l, the NAIH's president no longer has this right.

13.4 Withholding of Information without Sanctions

One established means of restricting access to public information lies in public institutions being unwilling (or only partly compliant, or using delaying tactics) to publish data or make it available online. The legal remedies for information petitioners are either to turn to the NAIH, or go through the courts. The NAIH may investigate the complaint and make recommendations, but it has no power to compel its release or to fine the unwilling body. Hence in general it has proven more effective, albeit more involved, to go through the courts. Journalists and NGOs have no choice but to initiate a multitude of suits, which are often drawn out, never reaching a resolution even after a final judgment is issued, since the authorities managing the data, or the state-allied corporation, refuses to release the necessary information in spite of the judgment. Hence it has happened that the petitioner for information has initiated enforcement procedures, or penalty enforcement, against the Ministry of Foreign Affairs and Trade, which handles public data.

13.5 Legal Uncertainties: Special Legal Order Regimes

Constant legal amendments are impediments to the exercise of rights relating to freedom of information. The section of the Information Law dealing with freedom of information was amended on 19 occasions between 2012 and 2023, generally buried within omnibus bills ("salad laws"). In three cases, the amendments were made by the government overriding the law with government decrees, citing a state of emergency, even though Parliament was not impeded from functioning. Government decrees referencing a state of danger, allowing for the free suspension of laws protecting constitutional rights, and for restricting rights directly, create a kind of parallel normativity outside the laws. The resulting legal chaos has meant an end to legal certainty.

14. Freedom of Expression

(Gábor Polyák)

14.1 Regulations and practices stimulating self-censorship

14.1.1 ***After 2010, several legal acts were passed***, the wording of which is confusing but clearly aimed at curbing expression. These rules usually responded to a specific situation and were utterly unprepared. One such example was the inclusion in the law of a criminal prohibition of false audio or video recordings that are liable to defame, which was linked to the "Baja video" case made public during the 2014 election campaign. In the video, Fidesz activists discussed their methods to influence the election results. The recording was published by the independent news portal HVG.hu, but it quickly turned out to be fake. The editor-in-chief resigned after the incident. Parliament hastily created a new criminal law provision against misusing false recordings during the incident.

14.1.2 ***One such reactive regulation was the amendment to the crime of spreading rumors*** during the COVID-19 pandemic. The law's wording is unclear, but it has discouraged doctors, school principals, and other decision-makers from making statements to the press about the pandemic.

14.1.3 ***The Civil Code's rule sanctioning communications*** that offend the community has not been used in any case so far to protect a minority group, but rather the "Hungarian nation" or the "Christian community." Thus, the regulation does not protect the dignity of communities but threatens speech critical of the government.

14.1.4 ***Since 2010, the government has been punished*** on several occasions when the bodies it oversees have taken a professional stance contrary to its own. The first such case was the renaming of Budapest airport (2011), where the committee that decided on the renaming did not support the government's proposal and subsequently dismissed its members and even fired them from their other jobs. The heads of the National Meteorological Service (OMSZ) had to leave in 2022 because the OMSZ had given a professionally sound but ultimately inaccurate weather forecast for the 20 August fireworks display, which led to the cancellation of the fireworks display. Most cases like this are certainly not made public.

14.2 Severe restrictions on the parliamentary open debate

14.2.1 ***The Parliamentary Rules severely restrict the freedom of expression*** of opposition MPs, and the Speaker can impose significant financial sanctions on those who breach the restrictions. In several cases, these rules have remained unchanged despite the European Court of Human Rights ruling that they are contrary to the European Convention on Human Rights.

14.2.2 ***The Parliamentary Rules also limit the scope for parliamentary reporting.*** Journalists are only allowed to question Members in a tiny area of the Parliament building. The Speaker can ban journalists from the House. However, according to the European Court of Human Rights case law, such a ban is only possible in exceptional circumstances if Parliament is threatened.

14.3 Eliminating political debate

14.3.1 ***Leading pro-government politicians*** do not talk to journalists from non-government media, do not answer their questions, and often do not allow them into press conferences and other public events. Thus, government press conferences are nothing more than forums for current political messages.

14.3.2 ***In election campaigns***, government candidates never debate with opposition candidates, and there have been no policy debates since 2010. The governing parties have a considerable dominance, completely dominating the public space. Separating public money and other resources in these governing party campaigns is impossible. The government's "public information" and Fidesz's propaganda are coordinated in substance. Numerous pseudo-civil organizations, directly or indirectly funded by public money, are involved in Fidesz's ongoing political campaign, further reinforcing inequality.

14.3.3 ***Permanent propaganda*** seriously distorts public discourse. It uses media messages, poster campaigns, and manipulative "national consultations" to target voters, using vast amounts of public money. This makes it impossible to have a calm dialogue about real social problems. According to the aggregate of investigative portals, between 2015 and 2023 alone, 1360 billion HUF (3,5 billion EUR) of public money has been spent on government propaganda.

14.4 Homophobic law

Legislation and propaganda targeting members of the LGBTQ+ community are causing severe damage to public discourse. The 2011 legislation banned NGOs from working on the issue in schools, and the subject has virtually disappeared from public education. Under the law, books on LGBTQ+ issues must be sold wrapped and segregated and cannot be sold in all bookshops. The Media Council regularly brings proceedings against television and streaming providers for showing LGBTQ+ issues.

14.5 Structural censorship in educational, cultural and health institutions

14.5.1 ***Through its rules on funding***, appointments, and state control, the government has indirectly brought all sectors of the human sector entirely under its control. These processes stifle any form of open and diverse social dialogue.

14.5.2 ***The heads of educational, cultural and health institutions*** tend not to talk to the press.

14.5.3 ***The funding of independent cultural institutions*** is unresolved, and their situation is constantly deteriorating. The government supports many propagandistic cultural projects while funding independent theatres, filmmakers, and rural museums has virtually disappeared.

14.5.4 ***The government punishes criticism of actors*** in cultural life by cancelling scheduled concerts, withdrawing subsidies, or silently banning them from certain institutions.

14.5.5 ***In schools, the uniform use of textbooks***, central control and the practice of appointing school leaders make free and creative work impossible.

14.5.6 ***The reorganization of higher education institutions*** into foundations can only be justified as a means of strengthening political control, as it does not bring benefits that could not have been achieved without the restructuring. Most trustees have clear links to Fidesz but no experience in higher education. The state financially penalizes the universities that remain in state maintenance, and their funding is tragic.

14.6 The "sovereignty protection" law

The enactment of the "sovereignty protection" law in 2023 is a new level of political attack on freedom of expression. The law can be used against practically anyone, be it an NGO, a media organization, a journalist, a researcher or an individual. The Office, which is set up by the law, can investigate organizations that engage in or support activities aimed at influencing the will of voters in the service of foreign interests. Its terms are unclear, but the office can also have unlimited access to intelligence data. The law does not provide for any sanctions. Still, there is no legal remedy against the annual report of the Office for the Protection of Sovereignty, which can brand any NGO, media or individual with false accusations. The law's adoption led the European Commission to launch infringement proceedings in February 2024.

14.7 The "National Consultation"

An essential tool of Fidesz propaganda is the so-called national consultation. It is an entirely unregulated procedure, a political action without legal consequences. The questionnaire, produced with public money and sent out to all voters by post, with the answers it suggests, serves the sole purpose of reinforcing the government's propaganda messages and making the political decisions it has previously taken appear to be the will of the people. The "national consultations" are always accompanied by a significant media campaign. The "national consultation" has so far dealt with issues such as the "Soros plan", immigration and terrorism, "Brussels overreach", "the harmful effects of EU sanctions against Russia" and most recently "the defense of national sovereignty", rather than with issues of fundamental importance to society. The questions asked are manipulative, essentially offering one set of answers. There is no reliable data on the number of questionnaires answered, and there is evidence of abuse of the online response option. The way the results are processed is not transparent. The questionnaires are not compiled and processed under the basic professional standards of public opinion polls, while each 'consultation' consumes billions of forints.

15. Media

(Gábor Polyák)

15.1 Abolishing the political independence of state bodies overseeing commercial and public service media

15.1.1 *Ending the independence of the media authority*

- The design and application of the rules for the election of members of the Media Council in a way that allows only Fidesz candidates to be elected.
- The Media Council makes its decisions with broad discretion, which makes applying the law untransparent and arbitrary.
- The Media Council's political bias is especially evident in decisions affecting the media market: By tendering for radio frequencies and controlling media mergers, the Media Council has been actively involved in creating a distorted and unprecedentedly concentrated media market.
- In media content monitoring, the refusal to initiate politically sensitive procedures is the primary evidence of bias.
- The Media Council and its President have decisive power over appointing the public service media heads. They are, therefore, also responsible for any problems in their operation.

15.1.2 *Ending the independence of the public service media*

- The public service media provider's organizational structure is completely centralized, untransparent, and not subject to external control.
- The only actual function of the Media Services Support and Asset Management Fund (MTVA) is to make public service media's operation, financing, and editorial principles completely opaque and remove them from any control; no other organizational solution in Europe is even partially comparable.
- The Public Service Board of Trustees has no proper control over the public service media, firstly because the governing party majority is guaranteed by law, and secondly, because it cannot control the activities of the MTVA, which has true power, but only the Duna Médiaszolgáltató Zrt, which has no relevant functions in running the public media. According to the minutes of

the meetings of the Public Service Board of Trustees, no substantive work is being done.

- The use of the public service media budget is not transparent, its objectives are unclear, and its control is poorly managed.
- In political reporting, the public service media performs no public service function whatsoever, apparently aiming to present the pro-government narrative exclusively.
- In the production and distribution of cultural content, public service media are, at best, exceptional in their ability to create value for the resources they use.

15.2 Distorted allocation of resources in the media market

15.2.1 ***Massive concentration in the media market:*** since 2010, the companies close to Fidesz have continuously expanded in all segments of the media market; the commercial media close to Fidesz are nowadays three big ones – Central European Press and Media Foundation (KESMA), TV2 Group, Index. hu – and a few smaller media companies – Rádió 1, Pesti Srácok – are now leading in all media segments except the weekly newspaper market and have a monopoly position in some markets (county newspapers, national commercial radio).

15.2.2 ***Market distorting effect of state advertising:*** In the Hungarian media market, the state and state-owned companies are the biggest advertisers. This is an unprecedented market distortion in the EU and transatlantic countries. The purpose of state advertising is twofold: on the one hand, to ensure the continuous and effective distribution of government political campaigns and propaganda messages, and on the other hand, to provide stable funding for pro-government media. The distribution of public advertising is highly discriminatory, benefiting almost exclusively the pro-government media and those media that are necessary to maintain the illusion of press freedom.

15.2.3 ***Market-distorting interventions reach all segments of the media market,*** from media agency and sales house markets to newspaper distribution and printing capacity. In this way, KESMA is inescapable for independent print press players. The Fidesz-led takeover of Vodafone in 2023 has brought a

significant part of the broadband internet access market, alongside the cable TV market, under political control.

15.2.4 ***In the 2020s, the market distortion has also reached social media,*** where the most significant advertisers are the state and Fidesz-affiliated organizations, such as Megafon, which are largely publicly funded. This also gives propaganda messages a massive reach on social media, but there is no guarantee that the promoted videos will be watched; research by the Mérték Media Monitor shows that the impact of these videos is limited.

15.2.5 ***State support for pro-government media*** also takes many other forms: unbalanced allocation of radio frequencies, state or state-guaranteed loans for expansion (TV2), maintenance of minority state ownership to reduce capital requirements (Antenna Hungária, Vodafone), classification of media mergers as "national strategic importance" (KESMA), discriminatory taxation (TV2).

15.2.6 ***Independent media heavily rely on small donations and grants for funding,*** which ensures that they are free from political and economic influence but does not allow for sustainable business models. Grant funding is also a constant reference point for stigmatization from the governing party.

15.3 Manipulating the information environment

15.3.1 ***Continuous political campaigns and state-funded disinformation:*** The government uses the media space it has acquired, to a lesser extent, for government propaganda for success and, to a greater extent, for creating enemies. This way, it constantly dominates the political agenda, diverting public debate from crucial societal issues. The main result of political campaigns is the extreme polarization of society.

15.3.2 ***Making access to public information more difficult:*** Usual channels for political information, such as interviews with politicians and press conferences open to all, have essentially disappeared. Independent media outlets have already given up on information available in this way. In addition to the legal barriers to access to public interest information, which have increased in recent months, although one of the European Union's rule of law conditions was the abolition of such barriers, access to public interest information is limited primarily by the behavior of public institutions:

the routine response to requests for public interest information is refusal, which journalists can only remedy by lengthy litigation.

15.3.3 ***Damage to the credibility of independent journalism:*** While independent media journalists are not physically attacked or subjected to strategic lawsuits (SLAPP), they are constantly verbally attacked and discredited. Currently, the term "dollar media", which serves foreign interests, is the primary tool. This discrediting aims to make the propaganda media make the public believe that all journalists and media are biased and that there is no neutral reporting.

15.3.4 ***The most significant attack on journalistic freedom is using Pegasus spy software*** against journalists and media owners. This has serious long-term consequences, particularly discouraging potential journalist informants. Since the revelation of the interceptions in 2021, no substantive proceedings have been launched to establish responsibility.

15.3.5 ***Adopting the Protection of Sovereignty Act 2023*** is a further step in the assault on independent media and journalism critical of the authorities. The Office for the Protection of Sovereignty will not impose sanctions. Still, it will be the main initiator of public stigmatization and coordinated action by other state agencies, including the secret services.

15.3.6 ***Overall, Fidesz's media policy aimed to create a polarized public sphere*** in which the relative but stable majority of voters make their political decisions almost exclusively based on state-funded disinformation. The independent media, critical of power, do their job professionally in a continuous economic and information crisis but have little chance of shaping the opinion of government voters.

16. Freedom of Assembly

(András Kristóf Kádár)

The 1989 law regulating the freedom of assembly was replaced in 2018 by Act LV of 2018 on the Freedom of Assembly (FoAA). Although the new law corrected some flaws in the previous regulation, it did not solve several of its substantive problems, it created new impediments to exercising the freedom of assembly, and, n the whole it has moved the practice of the freedom of assembly in Hungary into a more restrictive direction, especially if the jurisprudence that has evolved around the new legislation is taken into account.

16.1 New Administrative Obstacles

16.1.1 ***Notifying the authorities about assembly:*** Before the FoAA went into effect, the police had accepted a simple email or fax notification about assemblies. Under the new regulation, besides in-person or postal notification, the only accepted means of notification is through the government's electronic portal ügyfélkapu.hu. This may pose considerable administrative hurdles for demonstrators, particularly in the case of urgent/spontaneous assemblies, given that failure to notify constitutes as petty offence punishable with a fine of up to 200,000 HUF.

16.1.2 ***Mandatory legal representation:*** A request for judicial review against a ban on or a restriction of an assembly may only be submitted through a legal representative; otherwise, the Kúria (Hungary's apex court) will reject the request without consideration. Mandatory legal representation is deeply discriminatory against applicants who cannot afford a lawyer, since the procedural deadlines in assembly cases are very short, and therefore it is almost impossible to secure legal representation through the state legal aid system.

16.2 New reasons for banning an assembly

16.2.1 ***Disruption of traffic:*** The FoAA has significantly expanded list of the reasons for banning assemblies. Previously the Police were authorized to ban an assembly if it would seriously threaten the undisturbed functioning of

bodies of political representation or courts, or if the traffic could not be redirected via any other route. But the new FoAA also allows for a ban if, inter alia, an assembly "impairs the order of traffic" – an overbroad definition posing a very low threshold for restricting a fundamental freedom.

16.2.2 ***Residences of politicians:*** The FoAA allows for bans if, inter alia, a gathering might violate third persons' right to private and family life or the privacy of their homes. The governing majority simultaneously also amended the Criminal Code to extend the concept of harassment to include activities targeting office holders at a place or time incompatible with the office holder's performance of their official duties. As a result of these two amendments read in conjunction, demonstrations at politicians' residences have been prohibited since 2018, in spite of the fact that such assemblies have been accepted (within proper limits) by the Strasbourg court as a legitimate form of expressing political views.

16.3 The Restriction of the Right to Assembly in Certain Premises

16.3.1 ***Designation of an area as a "security operational zone":*** In addition to banning an assembly, the police may also prevent demonstrations by making certain premises inaccessible to the public in the framework of a "measure for protecting a person or a premise" (also known in police jargon as designating an area as a "security operational zone"). Such a procedure has been used to prevent protests in front of the Prime Minister's Cabinet Office since December 2020, when the police first closed off the area to prevent journalists from asking questions from arriving Government representatives on a politically sensitive case. That area has been off-limits to demonstrations since that time, and the FoAA provides no legal remedy against this police decision. On more than one occasion, the police have used force (tear gas for example) to prevent groups protesting against Government policies from gathering in front of the Cabinet Office.

16.3.2 ***Redefinition of "public space":*** While previously any space to which the public had unlimited access was classified as a public space, and could therefore be the site of a demonstration, the FoAA restricted this definition, removing private properties open to the public from that category. The Act prescribes that gatherings may be held in such spaces only with consent

of the property owner. Violating this order is a petty offence with possible fines up to 200,000 HUF. Running counter to the standards of the Strasbourg court, this regulation renders it impossible to protest, for example, on the property of a state corporation, or the property owned by a private entity (for instance, a private company) with close ties to the state, even if such a space is otherwise accessible to the public (such as a parking lot or a business location). As an example, this change in the definition provided the basis for the police to fine a student activist protesting at the premises of a museum that restricted access to its exhibition in line with the Government's homophobic policies.

16.4 Suspension of the Right to Assembly via a State-of-Danger Decree

Exploiting the oft-criticized power to issue state-of-danger decrees, the Government banned for two distinct periods (between March and June of 2020, and between November 2020 and May of 2021) any assembly aimed at the expression of political opinions, no matter the size, location, or type of demonstration. The harm done by this complete ban is made even worse by the fact that it was enforced during time periods when there were no similar restrictions on other, potentially even larger gatherings that were not intended to express opinions, but aimed at religious worship, family gatherings, sports events, casino visits, and other activities related to the consumption of goods or services.

17. Freedom of Association

(András Kristóf Kádár)

On numerous occasions, the ruling majority has arbitrarily restricted the rights of organizations which had been formed on the basis of the freedom of association, and which have a role in limiting and controlling the actions of executive power. It has attempted to prevent, or at least impede, the effective operations of these organizations through one or more of three primary means: by undermining the credibility and financing of these groups, and by limiting their activities through legislative measures, including the passing of laws designed to produce a chilling effect.

17.1 Civil Society Organizations (NGOs)

17.1.1 *Undermining the credibility of independent civil society groups*

Since 2013, there has been an ongoing campaign to undermine the credibility of NGOs, using the central narrative that independent (and hence often Government-critical) civil society organizations are actually serving foreign interests, their funding is non-transparent, and their activities represent a national security risk. This trope consistently recurs in the communication of high-ranking government officials, politicians, and government-friendly media. It is also cited in the explanatory memorandum of laws and even appears in an intelligence report that came to light in 2023, discussing foreign financing used during the 2022 election. Although the intelligence report itself concludes that there was no connection between foreign support for these NGOs and the elections, it still calls for further investigation into the issue. . Furthermore, it also contains data that cannot be found in the concerned NGOs' public records or statements – an unambiguous sign that secret information gathering targeting the groups had taken place. These organizations and their members have won a number of court cases against Government actors and government-friendly media regarding false statements impugning their good reputation, but this has not stopped the propaganda campaign conducted against them.

17.1.2 *Undermining NGO financing*

The domestic structure created for the distribution of NGO-funding is non-transparent; most of the support ends up with organizations with ties to the Government, which does everything in its power to also shut off foreign funding sources

from independent NGOs. Indeed, it even chose to give up on 214.6 million HUF available from the so-called "Norway grants," rather than agreeing to grant the role of distributing the CSO-share of that support to actors unaffiliated with the Government. As for a similar agreement, with Switzerland, the Government refused to allow independent NGOs to distribute 5% of the 87.6 million CHF support, although in the previous support cycle this was the accepted arrangements.

17.1.3 *Restrictive legislative measures*

Lawmaking designed to restrict the work of NGOs began in 2017, with Act LXXVI of 2017 on "the transparency of organizations supported from abroad". This law required – under the threat of eventual dissolution – organizations receiving more than a certain amount of funding from non-Hungarian sources to register themselves as "foreign-funded organizations," and to include this phrase in all their public communications. The explanatory memorandum attached to the law Contributing to the undermining of the credibility of the concerned NGOs, the explanatory memorandum of the law repeated the Government's communicational panel claiming that foreign support for NGOs "may pose an increased danger to Hungary's national security and sovereignty." In 2020, the Court of Justice of the European Union concluded that the law was contrary to EU law, partly due to the disproportionate restrictions it imposed on the freedom of assembly. The Government majority only nullified the law a year later, when the European Commission decided to initiate an infringement procedure for the failure to comply with the judgment, which could have had serious financial consequences for Hungary. However, at the same time, Parliament passed a new law (Act XLIX of 2021 on the transparency of civil society organizations engaging in activities capable of influencing public life), which expanded the jurisdiction of the State Audit Office (ÁSZ) to oversee certain NGOs, irrespective of whether or not they receive any public funding. The law gives ÁSZ virtually complete access to data possessed by the NGOs, and the body's investigation ends in a report that cannot be challenged by the concerned NGOs before a court. Hence, independent NGOs are unable to defend themselves through judicial review if the report contains unjustified conclusions damaging to their reputation.

Similarly, in response to an EU infringement procedure, Hungary's Parliament also amended the Criminal Code's provision penalizing organizing the provision of assistance to asylum seekers in cases where the asylum claim turns out to be ungrounded at the end of the asylum procedure. However, even this amended regulation can have a chilling effect on such activities. In addition, the special immigration tax remained in effect, restricting both the right of assembly and the freedom

of expression by imposing a tax on (among other things) providing financial support for Hungary-based NGOs that perform activities "facilitating immigration" an approach well-aligned with the Government's efforts to undermine financing for NGOs performing work it finds objectionable.

The most recent piece of rights-restricting legislation is Act LXXXVIII of 2023 of the "protection of national sovereignty". This applies to any organization that, in the view of the Sovereignty Protection Office, acts in the interest of a foreign organization or group, or natural person, in a way that might influence democratic discourse or state and social decision making processes, and thus may violate or endanger Hungary's sovereignty. Like the State Audit Office, the Sovereignty Protection Office is authorized to claim that NGOs provide free access to, in principle, all data of any type they are in possession of. Again, there is no judicial remedy against its procedures or the report it publishes as a result of its investigation. The person appointed as the President the Office was previously the editor-in-chief of a government-friendly weekly that was obliged by the court to pay significant damages for publishing a stigmatizing list of individuals critical of the government.

17.2 Trade unions

17.2.1 *Undermining the credibility of trade unions*

The Government has also undertaken a campaign aiming to discredit trade unions. By way of example, as teachers' trade unions were consistently calling for a solution to the serious problems within the system of education, including the improvement of teachers' working conditions, official Government communications were alleging that in addition to opposition politicians, these trade unions were the "greatest enemies" of pay raises for teachers. The explanatory memorandum of Government Decree 36/2022 (II.11), on state-of-danger regulations for public educational institutions, which undermined teachers' right to strike, alleged that the teachers' unions were politically biased, when it claimed without basis that "in relation to salaries the left-leaning trade unions never organized a strike in 2010 when the Gyurcsány-Bajnai administration deprived the teachers of one month's pay."

17.2.2 *Hampering the funding and operations of trade unions*

Starting with 1991, a well-operating system was put in place, whereby employers were required, if requested by employees, to deduct union membership dues from their salaries and transfer them to the unions, and to provide the unions with an annual register containing the names of the concerned employees and the amounts

deducted. Act LXX of 2023 put an end to this system, and, without any explanation, expressly prohibited employers in the public sphere from deducting and forwarding union dues. This means additional tasks and potentially expenses for employees in relation to paying their dues, and in some cases extra expenses, and it also substantially impedes the operation of trade unions, not only because of the potential loss of dues paid, but also because it hinders them in establishing their membership numbers which are very important for several trade union functions.

17.2.3 *Legal restrictions*

There have been a number of other cases where the Government (or its parliamentary majority) has restricted or impeded the work of trade unions that spoke out on sensitive political issues or situations, in the interest of the employees they represented. An example is the determination of the mandatory minimum level of services during a strike in a way that renders the strike unnoticeable and therefore practically meaningless. This happened when the unions started to organize the teachers' strike at the end of 2021. Amidst the legal debate on what would constitutes the mandatory minimum level of services in schools during a strike, the Government adopted a state-of-danger decree [Decree 36/2022 (II. 11) of the Government], in which it determined this mandatory minimum level of services, effectively removing this decision from the hands of the Labor Court and closing off the unions' avenue to an effective strike. (The regulations of the decree were later codified into law with the Parliament passing of Act V of 2022.) Another example of the Government abusing its authorization to pass state-of-danger decrees was the complete prohibition of the planned strike of air traffic controllers in the summer of 2021 (Decree 446/2021 (VII. 26) of the Government). The teachers' unions were impeded by a legislative measure never previously employed: Act LII of 2023 on the new career path for teachers stipulates that a union is entitled to enter into collective contract only on the condition that it has enlisted at least 10% of the workforce among its members in the given educational institution.

17.3 Interest-representation Organizations and Professional Chambers

The arsenal used by the Government majority against civil society organizations and trade unions is also employed against professional chambers and other interest-representation bodies, if their advocacy work goes against the interests of the Government. The best-known example here is the Hungarian Medical Chamber

(Magyar Orvosi Kamara), which was strongly critical of the restructuring of the duty scheme for doctors. In the wake of this criticism, high-ranking Government officeholders – backed up by Government-friendly media – accused the Chamber of political bias, abuse of power, and endangering patient care. The communications attacks were followed by a special legislative procedure of the Parliament, which passed in only one day the Interior Minister's bill aimed at severely weakening the Medical Chamber in many aspects. Act I of 2023, which entered into force only one day after it was adopted, ended mandatory membership in the Medical Chamber, in a way that doctors were required to state their intent – with a very short deadline – if they decided to maintain their membership (and not if they decided to leave the Chamber). This law also withdrew the Medical Chamber's right to adopt a Code of Ethics and to conduct ethical procedures. Furthermore, the Chamber may now only issue an opinion on the professional eligibility of physicians applying for leadership positions with regard to its own members, but not when the applicant is a doctor whithout membership in the Chamber (previously the Chamber had the right to form opinion on professional eligibility with regard to all applications for medical leadership positions). The termination of mandatory membership was designed not only to destabilize the legitimacy of the Chamber, but obviously also to affect the financial basis of its operations, particularly by requiring the Chamber to refund within 8 days a pro-rated share of annual dues to those of its members who decided not to renew their membership, or to end it by not making a statement about maintaining membership.

17.3.1 *The Parties*

A similar modus operandi is employed against political parties. There are numerous examples of arbitrary legislation serving momentary Government interests and designed to hamper the operation of opposition parties in sections of the present collection dealing with voting rights and Parliament – but similar steps have also been taken in other domains, with a particular focus on the undermining of the opposition parties' financial basis. After the 2022 elections, for example, the Government majority significantly reshaped the system of support for parliamentary factions, drastically reducing the sums available to opposition factions for their functioning. While these reforms also affected the support of Government parties, their support was reduced at a smaller scale, and – due to the Government's participation in the legislative work – the incumbent faction can obviously also rely on the resources of the Government, so the changes caused them considerably less difficulty than for the opposition.

The funding of the opposition parties is also affected by the one-sided oversight by the State Audit Office, which investigates irregularities in opposition campaign finance with exceptional strictness, while ignoring demonstrated expense overruns of the incumbent parties, and failing to take into account campaign expenditures incurred by organizations that pursue campaign activities supporting the Government, while being funded by the party foundations of the incumbent parties. The situation is exacerbated by the lack of any available judicial remedy against the Audit Office's conclusions, leaving opposition parties virtually helpless to contest findings that oblige them to pay significant sums and deprive them of the state support in the same volume. The Constitutional Court – the members of which had been elected by the incumbent majority – did not find this regulation (clearly violating the right to an effective remedy) unconstitutional. Hence, opposition parties burdened by sanctions imposed on them as a consequence of the Audit Office's reports have no legal recourse even if such sanctions endanger, or render completely impossible, their functioning, which may be the case in relation to the Audit Office' review of the campaign expenditures of the 2022 general elections.

18. Elections

(Bálint Magyar)

The legal framework of election process in Hungary has been shaped by the regime exclusively to serve its own interests. The most fitting description of the result is not "free but not fair" elections but manipulated elections. The manipulation involves:

- hollowing out the elections in advance;
- sabotaging the will of the electorate in advance;
- legal and illegal use of state power in support of the regime;
- systematic creation of the possibility of classic electoral fraud.

If falsifying the vote count is electoral fraud, because it unilaterally determines the future direction of governance by ignoring the will of the voters, then manipulating the election is also fraud for the same reason. Accordingly, the adjective "free but not fair" should be replaced by the term "manipulated" or "fraudulent" elections, whereas the traditionally narrow interpretative framework of electoral fraud should be replaced by discussion in a broader context.

18.1 Hollowing out the elections in advance

18.1.1 *Simple-majority lawmaking requirements in Parliament raised to two-thirds threshold*

18.1.1.1 Substance and manner of the fraud:

- Hollowing out the elections in advance by unilaterally changing laws requiring twothirds majority almost without limit, or making changing laws that could be adopted with simple majority into laws requiring two-thirds majority. Beyond the fraud involved, this technique will tie the hands of any future government aiming to dismantle the autocratic regime, but with no more than a simple majority.
- Preliminary curtailment of parliamentary and government powers: exempting certain subjects from popular sovereignty and democratic accountability, the regimenullifies the will of the voters even before the elections.
- The voting statues bill requiring a supermajority includes the possibility of gerrymandering.

18.1.1.2 Acts of fraud committed:

- Ratification of 317 two-thirds supermajority bills by 2022, of which 63 came during the year immediately preceding the elections for National Assembly representatives.
- The main types of topics for two-thirds bills or amendments:
  - rules restricting individual freedoms (e.g. church law, homophobic law);
  - restrictions on publicity, freedom of the press (e.g. rules on the body supervising the communications market, the law on the operation and management of political parties);
  - provisions relating to the functioning of Parliament (e.g. the act on the legal status, remuneration, and conflict of interest of Members of Parliament, requiring two-thirds majority for the dismissal of certain public officials);
  - rules on public administration (e.g. rules on the supervision of energy, utilities, concessions, competition, and nuclear power);
  - rules on management (e.g. national property laws, laws relating to foundations).

18.1.2 *Appointments by the current Government that overrun its formal mandates*

18.1.2.1 Substance and manner of the fraud:

- Hollowing out elections in advance by entrenching public officials appointed by the regime in key positions of power, using a variety of means:
  - changing appointments that previously required a simple majority to a twothirds majority;
  - extending the terms of office of positions requiring a two-thirds majority, allowing for cross-appointment by "voluntary" resignation;
  - lifetime/indefinite appointments.
- After the elections, regardless of the outcome, a battalion of hard-to-remove public officials will remain in office who owe their mandate solely to the regime and the Fidesz majority.
  - in the event of a change of government these individuals can use the formal and informal means attached to their position to obstruct the new government.

18.1.2.2 Implementation of the fraud:

- Cementing 31 critical state posts, including the Chief Prosecutor, President of the Curia (i.e., Supreme Court), members of the Constitutional Court,

President of the National Election Board, President of the Budget Council, and the President of the National Media and News Council.

18.1.3 *Outsourcing of State resources to Foundations Controlled by Loyalists*

18.1.3.1 Substance and manner of the fraud:

- Hollowing out the elections in advance by removing, through two-thirds laws, significant decision-making powers from the powers of government and allocating them to actors appointed by the regime.

18.1.3.2 Implementation of the fraud:

- Outsourcing public assets to foundations in the year before the election and allocating permanent budget resource to them.
- Outsourcing thousands of billions of forints (ca. several billions of euros) worth of public assets to, among others: 21 universities and their real estate properties numbering in the hundreds, several dozen high schools, agricultural institutions, territories and farmlands, as well as cultural institutions, theaters, and castles.

18.2 Sabotagingthe Will of the Electorate

18.2.1 *Unilateral rewriting of the electoral system*

18.2.1.1 Substance and manner of the fraud:

- Pre-emptively sabotaging the will of the electorate by unilaterally rewriting the electoral system in the interests of the government.
    - A legalized violation of electoral equality: the unilateral rewriting of the electoral system allows the government to retain power, even if support for the government falls and the opposition rises. For example, in 2014 a mere 44% of the vote was sufficient to ensure a two-thirds majority in Parliament.

18.2.1.2 Implementation of the fraud:

- Adoption of a new electoral law with the votes of the government MPs only (Act CCIII of 2011).
- No election cycle has passed without the significant alteration of relevant laws. On several occasions these changes occurred within the year preceding an election, over the objections of the international community.
- Significant changes that increased the disproportionality of the electoral system:

- changing the elections from two rounds to a single round;
- available mandates were reduced in the general list category, and increased in individual districts;
- a "victor's compensation" was introduced;
- voting districts were gerrymandered;
- campaign restrictions were removed, and state funds made available for Government party use;
- the mandate for ethnic minorities was re-regulated antidemocratically;
- Hungarians (i.e. HU citizens) residing abroad were put at a discriminatory disadvantage vis-a-vis Hungarian living abroad in the neighboring countries: the former group was denied the right of voting by mail, making it more difficult or outright impossible for them to exercise their voting rights;
- territorial lists were abolished (although this was exceptional in actually reducing the disproportionality of the electoral system).

18.2.2 *Altering election results post factum*

18.2.2.1 Substance and manner of the fraud:

- Ordering the recount of the votes lacking the proper control of opposition parties.
- Disruption of the will of the electorate after the event by means of restricting the sphere of influence of positions won by the opposition.
- Post factum alterations of effects of the election:
  - generally, voters do not choose individuals directly, but persons or bodies vested with defined powers of administration;
  - restrictions on these persons or bodies constitute defrauding of election results.

18.2.2.2 Implementation of the fraud:

- Suspending the jurisdiction of local bodies after the opposition won significant seats in the 2019 local elections.
  - removal of building and urban development powers (building authority matters are transferred to government offices etc.);
  - taking away local government revenues (using the pandemic as a pretense, tax revenues were taken away from the municipalities, lands and related revenues belonging to opposition-controlled municipalities were transferred to the Fidesz-controlled county municipalities by designating "special economic zones" etc.);

- selective compensation of municipalities during the pandemic (the loss of revenue of pro-government municipalities was compensated, but not that of opposition ones).

18.3 Applying State Power for the Regime's Benefit

18.3.1 *Substance and manner of the fraud:*

- The manipulation of elections by (1) the targeted use of the media and power resources of the state in favor of the regime and against the opposition, and (2) by the discretional allocation of financial resources to strengthen the regime and weaken the opposition.
- An institutional violation of equality of opportunities: the regime unilaterally reduces the accountability of the government and the chance for critical opinions to be politically represented.
- Illegal construction of conditions for electoral competition: the involvement of bodies required by law to be impartial in the Fidesz campaign is tantamount to the violation of the law, which is not recognized precisely because of the colonization of supervisory bodies by Fidesz.

18.3.2 *Implementation of the fraud:*

- Transforming state media, with 100-200 billion HUF annual funding, into a propaganda mouthpiece:
  - in the leadup to the 2018 election, 61% of state news media stories dealt with the Government, of which 96% were positive. Coverage of the opposition was 82% negative;
  - as the 2022 election was approaching, the united opposition's candidate for PM was given a total of five minutes on air to speak to the voters.
- The Government's "informational" billboard campaigns, its online and offline advertising campaigns, and so-called "national consultations" are inseparable from the Fidesz electoral campaign.
- The media empire campaigning for Fidesz is financed from public monies and includes state-funded advertising. State intervention was a factor in 78% of public news outlets by 2019.
  - Facebook campaign: every party circumvents the official campaign spending limit with Facebook pages that are not officially affiliated to them but broadcast their messages. However, in the case of Fidesz, this exceeds by several magnitudes the scale of the opposition Facebook

campaign„ and its own media were generally funded by public monies (such as the Megaphone Center [Megafon Központ] and webpages of Mediaworks).

- Pseudo-NGOs campaigning for Fidesz, such as the Civil Cooperation Forum (CÖF), were publicly funded by tens of billions of HUF;
- Voters in local elections were openly threatened that, should the results be disadvantageous to the Government, they would be deprived of EU development funds;
- The Prosecution Office engaged in selective prosecution during the election period, ordering numerous investigations of opposition politicians, frequently during the campaign, to suit the ends of Fidesz;
- Institutions responsible for directing the election process (with the exception of the National Election Office) were Government-majority in makeup, and impeded investigations into electoral fraud;
- Under the guise of oversight of the expenses, the State Audit Office (Állami Számvevőszék) issued fines aimed to cripple the opposition parties. The amount of these fines sometimes approached these parties' entire budget;
- The Sovereignty Protection Office was established, enabling overarching surveillance of the public sphere, employing intelligence gathering tools, all without any civil oversight. Furthermore, it could initiate proceedings against opposition parties generally deprived of public funding, the implication being that they received support from abroad;
- At the same time, the Government coalition paid off voter groups important to the regime, distributing enormous, targeted funds from state budget sources. In the months leading up to the 2022 election, these expenses amounted to nearly 1.6 billion HUF, about 2.5% of Hungary's GDP.

18.4 Systematic creation of the possibility of classic electoral fraud

18.4.1 *Irregularities of postal voting*

18.4.1.1 Substance and manner of the fraud:

- The lack of regulation of postal voting opens the door to mass vote manipulation:
  - voting by mail is available only to ethnic Hungarians in surrounding countries who have no domicile within the country. These tend overwhelmingly to be Fidesz supporters. By contrast, the generally

Hungarians working or studying in the West, largely critical of Fidesz, may vote only at embassies or consulates, though this may mean for them a journey of hundreds of kilometers;

- since this system has been established, about 95-96% of postal votes have supported Fidesz;
- it was the postal votes for party-list positions, whose majorities switched in 2014 from the opposition to Fidesz, that were crucial for that party maintaining the two-thirds parliamentary majority;
- Fidesz changed the electoral law after the 2018 elections to validate votes in the upcoming elections that would have been rejected as fraudulent.

18.4.1.2 Implementation of the fraud:

- The postal voting packages are in the voters' possession for a long time, which poses a danger to the secrecy and voluntary nature of voting. Further, it is impossible to verify that the actual addressee completed the forms.
- The voting forms are collected by pseudo-NGOs (in Romania, for example). Some of these are even delivered by these groups (as in Serbia), contrary to law.
- There are also names of deceased people on voter lists, allowing anyone to use their ballots fraudulently.

18.4.2 *Voter tourism*

18.4.2.1 Substance and manner of the fraud:

- Voters in financial need who are dependent on the state are exploited by direct extortion, or by purchasing their votes.
- Fidesz has made the public service program a zone of utter dependency; the party is the primary beneficiary of it:
  - Voters in Ukraine, Serbia, and Romania with Hungarian citizenship and fictive addresses in Hungary were bussed in to vote, via a widespread organized scheme.
  - Mass registration under one address, formerly against the law, was legalized. Previously illegal, critical trans-border voter tourism and creation of fictive addresses in Hungary was legalized six months before the 2022 elections.

18.4.2.2 Implementation of the fraud:

- Organized and paid re-registration of voters to other districts.
  - Trans-border voter tourism: The goal is to have Hungarian citizens

residing outside the country vote, not just for party lists alone (via postal votes), but also for individual district candidates (in person); this is the reason for creating fictive home addresses within Hungary.

- Domestic voter tourism: Here the goal is optimization of votes, particularly in local self-government elections. Voters register in districts other than their own, where results are expected to be more contested.

18.4.3 *Extortion of voters in financial need*

18.4.3.1 Substance and manner of the fraud:

- Voters in financial need who are dependent on the state are exploited by direct extortion, or by purchasing their votes.
- Fidesz has made the public service program a zone of utter dependency; the party is the primary beneficiary of it:
  - twice as many people performed public service work during the month of the 2014 national elections than worked one month later, after the elections;
  - employment and dismissal of public service workers is the fully discretional jurisdiction of the mayors, against which there is no legal recourse;
  - subjugation to the mayor creates opportunities for extortion, a serious danger to election freedom;
  - the higher the proportion of public service work performed in a community, the higher the vote count for Fidesz. In the 2018 elections, for example, in areas least touched by public service, Fidesz list candidates received 55.4% of the vote, while in high public-service communities they received 67.1% of the vote.

18.4.3.2 Implementation of the fraud:

- Organized vote-buying and extortion.
- Illegal practice of chain-voting abetted by the legalized photographing of ballot sheets, which effectively meant the legalization of the extortion of vulnerable voters.

19. Education and Research

(Péter Radó)

According to the Hungarian Helsinki Committee, "it is essential to the rule of law that everyone is equally subject to the law. Regulations apply to everyone. Equality before the law and the rule of law over everyone and every institution must be complete." Assessment of the degree to which the rule of law is realized in education and science must therefore be guided by the following tenets and practices:

- legality based on transparent, accountable, democratic, and pluralistic legislative procedures;
- legal certainty;
- the prohibition of autocratic conduct on the part of the executive branch;
- efficient legal protection safeguarded by independent and non-partisan courts and observance of fundamental rights;
- separation of powers;
- equality before the law.

19.1 Public education

19.1.1 *Policy-making and decision making*

- Instead of a phase-in, which would allow interested parties (especially schools, parents, and teachers) to adapt to the new conditions, the government opted for instantaneous introduction of the new framework, preventing parents and learners from making informed decisions. Policies introduced in this way included the lowering of the compulsory school age and the immediate implementation of the centrally mandated curriculum for 2012 and 2020.
- Elimination of bodies (including the Committee for Public Education, the Public Education Council, the tripartite mechanism of reconciliation) that ensured the participation of various interest groups (teachers' unions and professional organizations, municipal self-governments, non-governmental school maintainers, minorities, youth organizations, employers' organizations, etc.)

- Complete exclusion of stakeholders from the process leading to the drafting of specific measures, in some cases replacement of stakeholders with allies of the government; making information relevant to the drafting of policies confidential; in some cases, falsification of such information

19.1.2 *Marginalization of municipalities (self-governments) in the area of public education*

- Municipalities lost control over all institutions of public education with the exception of kindergartens ("nationalization"). As a result, every natural or legal person can establish and maintain a school, except for municipalities. Although school buildings formally remained properties of municipalities, local communities completely lost the ability to influence the operation of schools.
- Since 2023, ownership of hundreds of buildings owned by municipalities has been transferred to churches without the agreement of municipalities or compensation accorded them.

19.1.3 *The institutional entrenchment of administrative centralization and direct political control*

- No longer registered as independent organizations, schools have been integrated into school district administrative centers operating as deconcentrated organizations of the central government (schools now operate as "seats" of administrative school district centers)
- Abolition of the organizational, professional, and economic autonomy of schools. The resultant micromanagement of schools by school district directorates completely precludes formal realization of educational freedom and creates a virtually unlimited leeway for coercive measures to achieve conformity with political expectations.
- As a result of the changes outlined above, school principals are appointed directly by the minister; employer's rights over teachers are exercised by the school district directors; charters governing the operation of schools are issued by the school district directorate; and schools have neither an independent budget nor the freedom to manage their economic affairs.
- The so-called KRÉTA digital platform created through the merging of digital diaries with the statistical information system for the administration of public education has become a tool of direct central administrative control over individual teachers.

- The use of repressive means serving political ends since 2022; the firing and disproportionate punishment of several teachers who took the path of civil disobedience.
- Restrictions of the freedom of speech and of the right to participate in the public sphere: school principals and employers are prohibited from making statements to the media.

19.1.4 *Eliminating the transparency of funding for public education*

- The central budget no longer affords transparency in the funding of public education, since all educational expenditures are merged into a single budget item.
- With the abolition of normative, legally mandated financing from the central budget, financing of public education has lost its predictability and transparency.
- The elimination of sector neutrality has resulted in six distinct, parallel systems of financing for public education, each of which operates according to different criteria.
- Within the budget of school district centers, no separate budget allocation is made for individual schools. Decisions concerning salaries and the financing of operational costs have become discretionary, allowing for personal, administrative, and political control exerted by school district directors.
- The financing of schools owned by traditional Christian churches (the political allies of FIDESZ) has been assigned to a system of case-by-case church subsidies that are not tied to specific expenses or funding objectives. The uses of church subsidies lack transparency. Relations between school maintaining churches and schools are unregulated.

19.1.5 *Curbing of employee rights*

- Restrictions of the teachers' union's right to strike and the comprehensive prevention of exercises of this right. The government has turned the mandatory consultation with teachers' unions in the drafting of measures relevant to the employment of teachers into an empty formality.
- The National Teachers' Chamber set up by the government, which teachers are legally obligated to join.

19.1.6 *The complete exclusion of for-profit actors and non-profit organizations from public education*

- Nationalization of pedagogical services, the exclusion of for-profit and non-profit organizations.
- The creation of a uniformized system of single textbooks has rendered for-profit publishers of textbooks irrelevant.
- The de facto banning of non-profit organizations from schools in the name of the fight against "LMBTQ propaganda."

19.1.7 *Restrictions of the freedom of conscience and religion*

- As a result of the artificial boosting of the number of church-owned private schools, there are several villages and towns with only one denominational school. This amounts to an infringement of parents' rights, declared in the Charter of Fundamental Rights of the European Union, to provide their children with an education in line with their worldview or religious faith.
- The integration of religious instruction into the national curriculum and the financing of the salaries of instructors of religion violates the separation of church and state.
- Indoctrination, which had previously been occasional and covert, became overt and systematic in the central curriculum of 2020.

19.1.8 *Weakening of judicial protection*

- Neither the regional school district centers of the government nor the local municipality has paid the compensation owed to the plaintiffs according to the court's ruling in the case about school segregation in the village of Gyöngyöspata.

19.1.9 *Restriction of the rights of parents and pupils*

- The elimination of the autonomy of institutional autonomy of schools has drastically reduced the scope for decisions made by schools, restricting parents' and pupils' ability to assert their interests.
- The introduction of a mandatory central curriculum and a uniformized single textbook system restricts the curricular autonomy of schools and teachers. The result is a violation of parents' right, declared in the Charter of Fundamental Rights of the European Union, to ensure that their children are taught in line with their pedagogical convictions.

- During the artificial boosting of the number of church-owned private schools, these schools were exempted from the enrollment rules that are in effect for state schools. As a consequence, the expanding role of church-owned schools in public education has inevitably brought about an increase in the segregation of Roma pupils.
- Government figures' talk of "loving segregation" excuses and encourages practices by local actors in public education that infringe minority and human rights.

19.2 Higher education

The main obstacle to the rule of law in higher education is the gradual elimination of the autonomy of higher education institutions. The most important changes restricting the autonomy of these institutions are the following:

- The rectors of universities are appointed by the minister irrespective of the decisions by faculty or university senates.
- One of the most important safeguards of the autonomy of particular institutions of higher education is the operation of so-called "intermediary organizations" that independently ensure and regulate the self-governance of the entire sphere of higher education. Having abolished these bodies, the government can now control universities directly, on a case-by-case basis.
- The abolition of the independence of the Hungarian Accreditation Committee restricts the autonomy of institutions. The quality control in accordance with EU regulations of degrees earned in Hungary is no longer ensured.
- In the sphere of higher education, "normative," legally mandated financing from the budget has dwindled, leading to a loss of transparency and predictability. Normative financing has for the most part been superseded by a system of discretionary funding, which creates ample leeway for political control.
- The appointment by the government–and selection directly by the Prime Minister–of chancellors and the establishment of consistory boards has allowed the government to interfere directly with the internal affairs of universities.
- The politically motivated administrative measures passed in order to make the operation of Central European University in Hungary impossible have destroyed legal certainty in the sphere of higher education.

- As a result of the 2021 law on the privatization of state universities, the overwhelming majority of universities was forced to accept a negotiated settlement that brought them under direct political control. The unrestricted authority of boards of trustees has virtually eliminated the autonomy of these institutions.
- The National University of Public Service has been granted a monopoly on training administrative leaders, while the teaching of gender studies has been banned in all universities. Both measures restrict universities' right to launch academic programs.

19.3 Research

- In 2019, the entire network of research institutes that had up until that point operated under the auspices of the Hungarian Academy of Sciences was detached from the Academy and reorganized into a network subject to government control. As a result of this reorganization, the system of public financing for research has – to a considerable degree – lost its transparency.
- In view of well-founded criticisms levelled at the Hungarian government on account of infringements of the rule of law, privatized state universities have been excluded from the Horizon Europe program, cutting off much of the research activity conducted in Hungary from international networks of research cooperation.
- The targeted harassment of individual researchers and research institutes by the authorities, as well as the administrative control exercised over a considerable portion of institutions of higher education, have conspired to create a chilling effect, forcing many researchers to engage in self-censorship.
- The government is financing a parallel network of research institutes operating according to ideological and political biases, with little regard for scientific and scholarly standards (Research Institute for National Strategy, Veritas Research Institute, Research Institute and Archives for the History of the Hungarian Regime Change, National Heritage Institute, Hungarian Language Strategy Institute, 21st Century Institute, Századvég Foundation, the various research institutes of the Mathias Corvinus Collegium, etc.)
- The scholarly discipline on which the government lavishes the most attention is historical research, which has been enlisted in the service of a partisan politics of memory, and is now forced to construct a new political and ideological narrative. In certain politically sensitive research programs in the social sciences, an informal political censorship prevails.

20. Culture

(Mária Vásárhelyi)

20.1 Introduction

The cultural policy of Fidesz is a politics of power and identity. The current Government regards culture as no more than a political tool to put an end to cultural diversity, thoroughly centralize cultural institutions and bring them under political direction and oversight, distribute funds earmarked for culture on exclusively political and ideological lines, to have their political clientele eating out of their hands and becoming dependent on them, and squeezing autonomous players from the cultural stage.

Fidesz sees in culture a means for long-term attitude shaping, which requires the institutions it controls to spread ideological messages broadly throughout society. To this end, it wishes to target the tastes of popular culture and the lesser-educated groups in society with disproportionately strong support, both financially and through the media. Fidesz' cultural policy centers around institutions, and it regards the cultural establishments run by its camp as its centers of power and ideology.

The conceptual directorship of cultural politics belongs to Viktor Orbán, whose conviction it is that cultural narratives – myths, beliefs, legends – can achieve what regular politics cannot. Ideological symbols, styles of imagination, and historical and cultural models are being introduced into the public consciousness that portray Fidesz and its leader to be the exclusive representatives and guardians of Hungarian national cultural values, as well as the embodiment of the cultural superiority of the Hungarian people vis-à-vis the surrounding peoples, and paint the Hungarian people as the innocent victim of historical trauma.

Only those who are unconditionally loyal to the Government are appointed to the leadership of cultural "power centers." These individuals dispense their backing along political and ideological lines. Although on paper it is the trustees who distribute state funds earmarked for culture, the actual makeup of those boards is unknown, as are their decision-making criteria. Ultimately it is their leaders who have the right to veto in every resolution.

20.2 15 Years of Kulturkampf

Despite the Kulturkampf now entering its 15th year, with vast amounts of public funding channeled along ideological lines, new cultural institutions established, old ones reshaped, and all public funding sources wrestled away from critical intellectuals, artists, and NGOs—unlike in the economy, criminal justice system, and media—this effort has not yet achieved the desired results in the cultural scene. A significant segment of players in the cultural sphere have not submitted to the will of the Party; this is why, today, the Government is attempting a complete centralization of the cultural stage. By now, consultation with civil professional organizations and experts is a thing of the past. These independent groups and organizations are ignored both in decision-preparation and decision-making processes.

20.2.1 *Language and cultural policy*

A central element of the Fidesz government's language and cultural policy is the appropriation and exclusionary redefinition of the concept of "nation", while simultaneously hollowing it out. Anything the Government sets its hands on and holds thoroughly under its influence, becomes "national." Just as their nationalized tobacco stores are "national," so too are the cultural power centers, formed solely based on loyalty criteria and controlling all state budget resources allocated to culture. The government constantly tries to maintain its dominance over the linguistic sphere. Through the language of autocracy, it attempts to infiltrate people's thinking—successfully. Their use of language involves the appropriation of words deemed crucial to a nationalist strategy, altering their meanings, turning them on their heads, establishing a culture of linguistic violence, incorporating military and war-related terms into everyday language, promoting the cult of power, and dehumanizing political opponents.

20.2.2 *The new culture law*

The new culture law, slated to be ratified by Parliament in the near future, arranges cultural institutions and their support systems into a pyramid-shaped closed hierarchy, facilitating the will of the Government to range freely from its peak to its base. In other words, it will be enshrined into law that only those programs and institutions that fit into these government-initiated and controlled frameworks will be eligible for support. This is a straight path to the end of autonomy and independent professional work. In short, the end of artistic freedom.

20.2.3 *The literary scene and pop culture*

The direction of literature and popular music, and the distribution of support for contemporary literature, has been put in the hands of the head of the Petőfi Literary Museum. The previously unknown director with a humble professional background – a self-confessed "fanatical Orbánist" – has seen his power grow consistently. According to emerging plans, the newly established Petőfi Cultural Agency will oversee all state funding allocated to literature and pop culture, including the associated institutional system and real estate. This will bring the institutional literary and pop music scenes under its control and supervision. The government has been trying to expand the circle of loyal creators by distributing unprecedented amounts of scholarships, creative grants, and concert support based on political criteria, albeit with limited success. Now it has turned to imposing its ideological expectations on participants of the literary and pop music scenes through total centralization of the institutions.

20.2.4 *The book market and publishing*

With the acquisition of Libri, the largest domestic publishing and distribution company, the Government has brought the book market under its influence. Currently, Libri controls 60% of the book market. This is what the Mathias Corvinus Collegium, a training institution created with massive public monies to create the future Fidesz power élite, has taken a 98% stake in. Libri is also one of the two major players in publishing, rising to a leading position in that sector through the purchase of a number of prestigious smaller publishing houses. Meanwhile, the Government has tried to quash smaller houses and distributors with administrative regulations that are impossible to satisfy, like the slapdash regulation of, and fines against, publishing, distributing, and even mailing books "popularizing sexuality" and "containing LMBTQ propaganda."

20.2.5 *The theater scene*

Centralization and hands-on control of the theater world are continually being fortified. The appointed directors of state-financed institutions are loyal figures who are eager to execute the will of cultural policy. Distribution of state funds, the content and evaluation of tenders, and selection of theater repertoire are the purview of the Director of the National Theater. Other theaters, supported by local opposition municipalities, receive no state funding of any kind. According to the new cultural concept, independent theater companies not only receive no state support, but are even deprived of opportunities for submission of tenders, and of performance. This is nothing less than the elimination of the independent scene. Under the new structure,

the Director of the National Theater will not only decide on the appointment of the heads of theaters, the approval of mandatorily submitted program plans, and the operation of theaters outside the capital, but also determine which companies and performances reach the smaller communities in the countryside. When the University of Theater and Film Arts, with an illustrious history, refused to give up its independence and step into line with the private foundations controlled by the state, the Government decided to put an end to the institution altogether, creating in its place a new university packed with its own political clientele.

20.2.6 *Community educational institutions*

Most community institutions such as cultural centers, libraries, and public performance spaces, have struggled with a constant underfunding, and now find themselves on the brink of closing. The upcoming new law will centralize their control. The Director of the National Theater has the last word in the support for cultural centers and community spaces outside the capital, as well as accepting or rejecting their project plans, and supervision of their execution. Ultimately, he makes the decisions on choice of performers and material reach the public in these rural settings.

Libraries outside the capital have found themselves in a deteriorating state as to their real estate, staffing, and book collections; these too will come under the direct supervision of the minister, who will decide on the lists of books to be purchased and what developments these institutions may undertake.

20.2.7 *Film industry*

Direction of the film sector, and state support for filmmaking have become the domain of one of the founding members of Fidesz, who is also simultaneously the director of the Palace of the Arts, one of Budapest's largest state-run cultural institutions. State support is granted almost exclusively to films that align with the government's political and ideological views. . It is not rare that enormous sums end up in the hands of political clientele from the dilettante elite, with no experience in filmmaking whatsoever. This is happening while independent filmmakers who have won numerous international awards and achieved great public success have no access to state funding. Some of them flee abroad, while others apply for international support and ultimately make films which, despite tiny budgets, often win important festival prizes and amass considerable audiences with their work.

20.2.8 *Music industry*

Direction of the music sphere has fallen to the director of the National Philharmonic Orchestra, formerly head of the government-created Hungarian Foundation

for the Arts. This comprises orchestras and choral groups supported by the state, musical foundations, societies, and properties. The head of the Philharmonic makes the decisions on distribution of state funding, operations of musical ensembles and their concert schedules, and exercises overall supervision over them. Independent classical musicians, according to the new plan, will receive no state funding, nor may they apply for such. The director of the Hungarian State Opera, who was appointed after a scandalous selection process, remained in the position despite the clear opposition from professional bodies and the advisory board. This person has no musical achievements to his name whatsoever, but is a prominent government propagandist in Fidesz media.

20.2.9 *Museums*

In recent years several storied museums, both in Budapest and the countryside, have ceased to exist, or been closed for years. The Museum of Transportation is no more, nor is the Museum of Military History in the Budapest Castle District. The Museum of Industrial Arts has been closed for years, while the Museum of Natural Sciences and the National Gallery find themselves in an uncertain limbo. Menwhile, this period saw the construction of the imposing House of Music in Budapest's City Park, and nearby the enormous (but out of place in its current location) Museum of Ethnography, which has moved from its original building on Kossuth Square. However, neither of these new institutions has been able to offer substantial content. The directors of these institutions, appointed by the government according to political criteria and frequently replaced, increasingly strive to fit the content of their exhibitions to meet the government's political agenda. This trend has been especially evident since one of the government-party museum directors was conspicuously fired for failing to satisfy the government's anti-LMBTQ expectations. The sole exception is the Museum of Fine Arts, which manages to offer at least one world-class exhibition annually that draws huge crowds. But many museums outside the capital remain closed for lack of funding, or try to sell part of their collections, since the local administrations responsible for their operation are unable to fund them sufficiently. According to the new cultural program, museums in Hungary receiving state funding will operate under the direction and supervision of the head of the National Museum.

20.2.10 *Contemporary Art*

State appropriation of museums, and their ideologically based direction, also affects decisions regarding contemporary art, which itself has fallen under Government influence. In state institutions, exhibition opportunities and state commissions

are almost exclusively granted to members of the Hungarian Academy of the Arts which was created and supported by the Government. Independent artists must rely on small private galleries.

20.2.11 *Historical preservation and World Heritage sites*

The state's obligation to protect historically important objects and World Heritage sites ended in Hungary in 2012. At first, a series of decisions lacking forethought or planning, and frequently chaotic in effect (while serving the interests of investors), obviously created uncertainty in the minds of the experts in historical preservation. Ultimately, the Government shut down historic preservation projects in Hungary from one day to the next, without any discussion with scholars in the field. A similar fate befell World Heritage sites: Although on paper their protection still exists, in fact it is professionally in tatters and dysfunctional in operation. Today, it is only here and there that local civil communities endeavor to carry on the duties of historical preservation.

20.2.12 *Public spaces and statuary*

The Orbán government's ideologized politics of memory have also left their stamp on public spaces and the statues erected there. The goal is to redefine those spaces, replacing historical memorials so as to solidify an imaginary, idealized image of an ancient past. The central topics are the Treaty of Trianon (Versailles), the Horthy era, an idealized image of "happy peacetime days," and repeated mention of a "glorious past," and carving into stone Hungary's victimhood. No preliminary consultation with experts preceded this reframing of the meaning of public spaces and the erection of new statues; cultural politics is based entirely on high-handed decisions creating the face of city which will, for many decades to come, be marked mostly by dilettantish, falsifying, and kitschy monuments of poor taste.

21. Freedom of Religion

(Júlia Mink)

21.1 Changes in Church State Relations

21.1.1 *The Demand for a New legislative framework and the vision of a "Hungarian Model"*

The goal of the new legislative framework was to create the so-called "Hungarian Model" based on state supported religious activity, the expanded financing of public tasks taken over by the churches, and on restricting the availability of church status by introducing stricter conditions. The Hungarian Model was to ensure a particularly privileged position for the so-called historical churches, culminating in the establishment of a "pluralist system of state churches." This model runs counter to the principle of the neutrality of the state, which is a guarantee of the right to religious freedom.

21.1.2 *Changes to the constitutional framework of the legislation*

The Preamble of the Fundamental Law, which took force on January 1st of 2012, makes a number of allusions to the state's Christian traditions and its commitment to religion. Article VII of the Fundamental Law constitutes a shift from the previous constitutional model based on a stricter separation, towards a cooperative model, since it codifies that the "separately" operating state and religious communities cooperate "in the interest of common goals." This new constitutional framework facilitates the intertwining of the state and certain churches, as well as the incorporation of the requirements of a particular (religious) morality into legal system.

21.1.3 *Ratification of the new law on churches, and its justifications in 2011*

Restrictions on the conditions for receiving church status were to be implemented by Act C. of 2011, on the right to freedom of conscience and religion, as well as churches, denominations and the legal status of religious communities. The stated purpose of this law was the abolishment of the so-called "business churches." The original draft was fundamentally amended immediately before the final vote due to Government coalition proposals, Thus, the new draft shifted the decision on the legal status of churches from the courts to the political sphere – to the parliamentary

two-thirds supermajority – and it envisaged the official recognition of much fewer churches (14 instead of 46). Regardless of these amendments, the bill was adopted that same day.

21.1.4 *Creation of a pluralist state church system*

Act C. of 2011 deprived more than 300 previously recognized churches of their church status, while it officially recognized the historical churches, their "branches" together with the Faith Church (Hit Gyülekezete). The law required a two-thirds parliamentary majority decision for official recognition, adding that a special agreement was required between the state and the recognized churches to receive state funding. This ensured the churches' financial dependence. The planned date of effect was January 1, 2012.

21.1.5 *The situation of disenfranchised churches*

The churches disenfranchised by this law were only allowed to continue to function as associations pursuing religious activity. Churches in this category which did not apply for an association and/or church status were threatened by cessation without legal successor, in which case their assets would accrue to the state. Act C. of 2011 prescribed stricter requirements for official recognition (e.g., 20 years of activity domestically, 100 years internationally), yet it did not provide detailed regulations for this procedure or offer opportunity for legal recourse. Nor did it allow for the financing of the existing educational and social institutions of the now-disenfranchised churches.

21.2 Legal Attacks on the Pluralist System of State Churches

Act C. of 2011 drew widespread criticism both domestically and internationally. Worthy of particular mention here is the Venice Commission's position statement published in 2012.

21.2.1 *New law on the legal status of churches before the Constitutional Court (CC)*

Constitutional complaints against Act C. of 2011 led to a CC ruling (164/2011, XII.20) that established the "public law invalidity" of the law based on errors of formal nature. The CC rejected the manner of the adoption of the law(fundamental amendment before the closing vote), in consequence of which the MPs could not

have familiarized themselves with the text in any substantive way. But the CC did not opine on the law's possible substantive deficiencies. This left open an avenue for the Parliament to adopt the law in essentially the same form as Act CCVI of 2011, whose provisions on the recognition of churches the CC nullified in a subsequent decision (6/2013, III.1). In this latter decision, the Court stated that these provisions violated the right to freedom of religion, the right to due process, the prohibition against discrimination, and the right to effective legal remedy. The CC called for a retroactive restoration (from January 1, 2012) of the church status of religious communities who challenged the deprivation of their rights, and also maintained that Article VII of the Fundamental Law demands the "neutrality of the state," which is violated by the arbitrary(political) decision on the church status.

21.2.2 *New law on the legal status of churches before the European Court of Human Rights (ECtHR)*

In 2014, the Strasbourg court established in the case of Magyar Keresztény Mennonita Egyház and Others v. Hungary that the right to freedom of religion had been violated in conjunction with the freedom of association, rejecting the parliamentary decision -making on the legal status of churches. The verdict held that indeed distinctions may be made between various religious communities, e.g. on the basis of their weight or social rootedness, but these must be based on objective and reasonable criteria applicable to every religious community equally, and the legislative framework should offer every such community identical opportunities to realize their goals and to acquire church status. This verdict was unsuccessfully appealed by the Hungarian Government in the Grand Chamber.

21.2.3 *Further amendments to regulation of church state relations*

The Constitutional Court's decision AB 6/2013 (III.1) led to an amendment of Article VII of the Fundamental Law. The new constitutional law vested with Parliament the power to decide on the so-called "established" churches' status, and on the cooperation. This allowed for the relevant sections to be restored to Act CCVI of 2011 as well. The law guaranteed state financing to established churches and their institutions; these established churches are also entitled to many other forms of state support too above those guaranteed by the law. This law provided the foundation of a considerable expansion of the role of established churches, for example, in the areas of education and social services.

In response to the ECtHR's verdict, Act CCVI of 2011 saw a number of significant amendments in 2018. The new law institutionalized 4 distinct categories for religious communities aspiring the status of a legal person: 1) Religious associations,

2) Listed churches, 3) Registered churches, and 4) Established churches. Courts are to determine the legal status of types 1-3. Eligibility for categories 2 and 3 required certification of personal income tax donations of 1% for a specified number of years. However, the churches deprived of their rights did not possess the "technical taxation number" necessary to receive such donations for several years. Even still, only recognition as established churches guarantees state support for a church and its institutions, and even still, it is vested only with the National Assembly to accord such a status with a two-thirds majority. Otherwise, in order to secure the financing of institutions operated by the lower category churches, the state may enter an agreement with such a religious community, but is not required to do so.

21.2.4 *The evolvement of situation of churches deprived of their rights*

One of the churches deprived of its rights, the Hungarian Evangelical Fellowship (HEF), which operates a number of educational and social institutions and met every legal criterion for the established church status, submitted unsuccessful requests for such a recognition both in 2012 and 2013. The HEF was also one of those churches that successfully challenged the new church law before the CC and the ECtHR. After the amendment of the law in 2018, the HEF reattained its "technical taxation number" and could collect tax donations. Still, its church status and the financial support of its institutions remain unresolved even today; its institutions are on the verge of cessation.

21.2.5 *Further changes to the constitutional framework, and their consequences*

The incorporation of elements of religious ethics into Hungary's constitutional system has been evident for some time, as for example in the Fundamental Law's provisions on families and marriage, which excluded the marriage of same-sex couples. However, Amendment 9 to the Fundamental Law in 2020 added further elements in the areas of parent entitlements, sexual orientation, gender, adoption, and the upbringing of children (see Articles L and XVI). The related amendments stated that "mothers are women, fathers are men," ordered the protection of a child's "right to the identity of its birth sex," and prescribed the "education [of children] based on the constitutional identity of our homeland and on Christian culture." In the same vein, it was made more difficult for same-sex couples to adopt, the so-called "pedophile law" was adopted, and abortion laws were amended (the "heartbeat rule").

22. Property Rights

(Gábor Gadó, Bálint Magyar)

22.1 State Intervention in Property Structures for the Benefit of Private Individuals and Groups with Close Government Ties

22.1.1 *Appropriation of private property by the state*

- In the interest of realizing "investments of particular importance for the national economy," the Government may use law to arrange that properties involved in such investments be appropriated by the state, using the formula that "...in the interest of precisely defining a property, the Government bureaus of the capital and counties are conducting a public administration procedure." (See Act LIII of 2006, paragraph 1/A.§ 3, amended on several occasions by successive Orbán administrations.)
- The state (i.e., the Government), may also acquire property, real estate, or equities in market transactions, typically at below-market prices or via conditions designed to enable confiscation. A good example here is the recent reshaping of a large sector of the domestic banking system. The first move was state appropriation and receivership of the MKB Bank, purchased by the Hungarian state in mid-2014 from the Bayerische Landesbank. The next step in this coordinated process, the acquisition of Budapest Bank came in 2015. In that case, the seller was General Electric Capital. These state acquisitions formed the basis (later adding the Takarék Bank and the Takarék Group) for the creation of Magyar Bank Holding (MBH), which since the spring and summer of 2023 has formed a unified financial institution under the name of MBH Nyrt., a public limited company. But in the case of the country's second-largest commercial bank, ownership rights belong not to the state, but to a group owned by Lőrinc Mészáros, Viktor Orbán's financial strawman.
- Reports suggest that negotiations for the purchase of a majority share of Budapest Airport will bear fruit in 2024, as a consortium representing the Government share will conclude a purchase contract with AvjAlliance GmbH. Th state's purpose in this transaction is not merely to produce

revenue for itself, but also to secure the opportunity to move persons and goods without oversight.

22.1.2 *Confiscation of local self-government property by the state*

- State confiscation of local self-government property, and the resulting assets (such as public spaces and other real estate properties) that accrue to the state free of charge, will have management rights passed to persons or organizations within the Government's business or political camps (for uses such as transitional state ownership, where it is not the property itself, but the licenses and income that end up in private hands).
- Expropriation of local self-government public spaces. Property rights to Budapest's Vörösmarty Square, Széchényi István Square, Podmanicky Frigyes Square, and József Attila Street will, following their transfer to state ownership, come under management of the Municipal self-government of District V. The legal pretense for this change of ownership was the reclassification of public duties the capital performs by the lawmakers, following which the properties were transferred to the district, which is led by the Government coalition. (See Act XXIV of 2022, on the foundations for central budgeting.)
- State duties regarding Budapest and its agglomeration are addressed in Act XLIX of 2018 (the so-called "Budapest Law"), which allowed for the rebuilding of the Castle District. The properties listed in the law, belonging to the Budapest ("Capital") self-government and the Buda Castle self-government (District I) "by virtue of the law became property of the state free of charge, transferred at book value." Self-governments that had been previous owners lost not only their private-law-based rights; the Budapest Law also deprived them of their administrative rights and authority.
- State takeover of transport for Budapest's agglomeration took place in the hope of receiving EU development funds to use in the leadup to local self-government elections, to extort or run down opposition leadership in the city.

22.1.3 *Self-government's mandatory solidarity tax to the state: unconstitutional confiscation of assets in the form of taxes*

- Self-governments typically do not benefit from constitutional protection against excessive (disproportionate) solidarity taxation. Lawmakers have significant latitude and discretion in this issue. Even so, it is a constitutional expectation that taxation levels be proportionate to targets prescribed by law.

The levying of a "solidarity tax" normally involves more prosperous self-governments contributing to other municipalities with lower tax revenues to facilitate their operation. Therefore a payment of such a contribution (in the form of a deduction from state support) cannot be so disproportionate that a self-government becomes unable to meet its legal obligations in local administration. It is further expected that tax levels allow for the prescribed minimums for adequate administrative operations. The given state organ – for the solidarity tax, this would be the Hungarian State Treasury (MÁK) – must undertake a formal procedure with justification for its determinations regarding the sum of state support accruing to a self-government, and which legal regulations apply in the case of its reduction. The Budapest self-government and MÁK are currently engaged in an administrative trial, where the plaintiff (the capital city) argues that the Treasury's procedure is unconstitutional. (Government-coalition leadership in Budapest in its final year (2019) was obligated by the Government to pay a 5 billion HUF solidarity tax. Since that time, Budapest has been run by the opposition and seen consistent increases in this tax, to the extent that, in 2024, its tax burden to the state budget is 75 billion forints.)

22.2 Transfer of State Assets to Private Individuals and Groups

22.2.1 *State allocation (transfer) of property allowed by law*

State property transfers free of charge to a Government-allied church or legal person. One example: With Act XVI of 2020, the National Assembly executed a donation of property for the benefit of the Hungarian Catholic Bishops' Conference, with the ultimate goal of facilitating the teaching duties of the Pázmány Péter Catholic University. In the wording of the Act, the contracts and data required for open property registers governing transfer of state property rights are "drafted and closed by organizations experienced in property law." There was no impact study performed before the vote on the law, nor was there an environmental impact assessment regarding planned construction. As owner, the state also ignored an evaluation of the legal interests of private property owners living in the Palace District in Pest.

Permanent transfer of property to public-interest asset-management foundations (trusts, or PITs) appointed by a Government minister, and run by committee. One example: The National Assembly, acting as an asset-management PIT, runs a large segment of institutions of higher education (the so-called "KEKVA trusts").

(See Act IX of 2021, which summarizes the role of PITs, and other laws on the reorganization of individual universities.) The relevant minister, vested by law, executes the creation of the KEKVA trusts. The Maecenas Universitatis Corvini Trust, which runs the Corvinus University of Budapest, was created by Act XXX of 2019. The founding charter, ratified on the basis of this law granted this trust stock packages hitherto owned by the state, and listed in the law (equities of MOL and Richter), among other things. The rights of property and university administration originally granted to the founding minister were passed to the board of the trust "for full exercise thereof." Expropriation of property rights free of charge was made possible by the ratification of a 2/3 majority law. None of these changes would be possible under a new government disposing of a mere simple majority.

Property transfer, guaranteed by international contract, from a country under contract with the Hungarian State to designated holding companies. A contract expected to be concluded, and codified into law in the near future, between Hungary and the UAE involving an enormous property development project in Budapest prescribes that the Hungarian State "inasmuch as the relevant Hungarian laws allow," execute the sale of necessary property "without tender or procurement" to a holding company designated by the other, investing country. Since Hungarian law does not allow the avoidance of competitive bidding in the case of valuable real estate, the provisos of the agreement will only "make sense" if their application runs counter to the cited provision, and by ignoring the existing legal prescriptions of Hungary.

22.2.2 *Legal exemption from the state's right of first refusal*

Expropriation of properties in areas of World Heritage protection (as discussed in Act LXXVII of 2011) allow the state the right of first refusal as a "primary rule." Still, section 6/A.§ of the law forbids this important partial licensing as regards structures serving as dwellings located on World Heritage sites, and in agricultural and forestry areas. Such a case occurred during the sale of vineyard lands in the Tokaj region where, for the protection of the common interest, the state may (or could) not exercise the right of first refusal.

22.2.3 *Assurance of provisional use rights of easements free of charge*

In the summer of 2023, the World Athletics Championships held in Budapest constituted a public interest that was used by the Government as justification for the National Event Planning Agency, Ltd. to use properties and public spaces enumerated in the Government decree between August 1 and September 1 of that year, free of charge. A peculiar aspect of this law was that it was part of a state-of-danger

decree referencing the "current armed conflict on the territory of Ukraine." (See Government decree 121/2023, IV.5)

22.2.4 *Purchase of companies loyal to the government, using credit from the state-owned Hungarian Development Bank (MFB)*

Article 39, Chapter 2 of the Fundamental Law does conceivably allow that credit issued by the MFB is not legally to be categorized as public money. On the other hand, it is obvious in an economic sense that the purchase of companies via MFB collaboration is indeed financed precisely by those public monies. This happened in 2023, when Government-allied 4iG corporation, together with the Hungarian State, took a 100% stake in Vodafone. (The former doing so via the interpositioning of its affiliate, Antenna Hungária, while the Hungarian State was represented in toto by Corvinus International Investment, Ltd.)

22.3 The Market-distorting Grants of Exclusive Rights and Transference of Government-Allied Enterprises

22.3.1 *Introduction of restrictions on entering markets for the benefit of Government-allied private companies to ensure long-term profit opportunities*

In 2012, the Fidesz government through legislation (a legal amendment was ratified in the space of one day, in a special procedure) prohibited private companies from operating slot machines, despite holding licenses allowing them to do so under stipulated conditions. Since that time, a private company has won an exclusive concession to operate these machines in casinos. (See Act CXCVI of 2011, on national assets, 12.§, par.1.)

In 2014, the National Assembly declared the operation of small businesses dealing in tobacco products to be an "exclusive economic activity," in contrast to its previous designation as a so-called "liberalized business activity." (See Act XCV of 2014.) As a result of this change, the Government allowed for régime-associated persons the guarantee of the right to extra profit by controlling concessions, along with more limited market competition.

Skirting a tender invitation, the state concluded a 35-year contract (until 2056) for the 5 casinos in Budapest, operated by the Government-loyal LVC Diamond Játékkaszinó Üzemeltető Kft (formerly part of the Las Vegas Casino Group). At the same time, Act LXXVI of 2020 raised the number of casinos that may be operated by a concessional corporation from 5 to 7.

Act II of 2021 amended the regulations on national assets, declaring that waste management was now an exclusively state-run operation. Following this, the state issued a tender for a concession for a motorway of some 2,000 kilometers, as well as an expressway network and its operations. In May 2022, the board of the Themis Private Capital Fund (made up of six private capital funds) won the rights to this concession. According to unpublished sources in the investment press, these capital funds belong to the networks of Lőrinc Mészáros and László Szíjj.

22.4 Sidelining of Authority Oversight of Government (and Government-allied) Businesses

Act LIII of 2006, on investments critical to the national economy (amended several times), allows the Government to remove certain projects (determined by edict) from the jurisdiction of standard administrative authorities. The law allows for the Government to issue decrees identifying an individual entitled to coordinate an investment (typically the Government lieutenant of a local government office), who has the power to direct any and all authorities and enforcers of professional standards.

With the Liget Budapest project, for example, it is the head of the Budapest Capital City Government Office who directs the coordination of "cases of high importance," a process that limits the jurisdiction of the Capital's Self-government in regulating the investment process. Government decree 546/2013 (XII.30), amended a number of times, prescribes that there is no obligation to seek an architectural and engineering review of project plans, or a townscape notification procedure.

The so-called "Budapest Law" – beyond its provisions for investments crucial to the national economy – speaks of the "renovation" of Gellért Hill, in particular regarding the "Citadella ramparts and their environs," adding that "prohibitions against construction, earthmoving, and alterations are not applicable." If the effective order of the appropriate self-government is "incompatible" with the Budapest Law, then the demands of the Law must be met, rather than the self-government order.

During special legal order régimes, the Government representative is given broader license than what is found in Act LIII of 2006. Government decree 523/2023 (XI.30) prescribes, "with regard to the existing armed conflict in the territory of Ukraine, and to the humanitarian catastrophe," that during a state of danger, cases designated as "of special public interest" or "special investment for public purposes," the acting authority:

- may not take into consideration the demands of historical preservation determined by the local self-government, and
- regarding the property affected by the investment, may not determine "special safeguards or protections for the area."

The category of investments of "special public interest" includes, for example, the agreement concluded with the People's Republic of China, concerning preparatory construction and execution of the Hungarian stretch of the Budapest-Belgrade railway line. (See Act XXIX of 2020.) The law empowers the Government to determine the townscape- and architectural needs of the location, surrounding area, and affected structures, as well as regulations for landscaping, foundational construction, and historical preservation. As for the actual execution of the work, it is carried out in line with procedures prescribed by the Government, as well as any special procedures for the preservation of nature and historical heritage protections that are determined by the appropriate authorities.

22.5 Forced State Expropriation of Private Property or Rights for Private Use

A Government draft bill submitted to Parliament at the beginning of April 2024 would expand the jurisdiction of the Hungarian Competition Authority (GVH) "in the interest of eliminating skewed competition practices ...as a preventative measure," enabling it to act, should a market situation arise (endangerment of supply-line security, for example) that "requires the intervention of the authorities."

Following strong protests from abroad, the bill was withdrawn. Yet it is still worth discussing here because it describes a model for the legalization of centrally-led corporate raiding, which has been illegal until now, through state coercion and extortion. According to this bill, this intervention into the operations of a privately held company, or its ownership structure, would require only a preliminary declaration by the GVH that the company falls into the category of "an enterprise of fundamental importance." This would require an examination of the company's:

- market share;
- cash reserves, or access to other assets;
- vertical integration, and operations in other markets related to its own;
- access to data relevant to the competition environment;
- services or goods: are they of fundamental importance to consumers or the economy in general;

- all its operations that are important for third parties, or consumers to have access to the procurement and sales markets, which would enable the company to affect the business operations of third parties.

While this bill offers no specific direction regarding whether such criteria are in fact measurable at all, the GVH could, "in the interest of supply-line security" have the power to oblige the owners of the enterprise to:

- sell the company's share of ownership, in part or in whole;
- transfer the company's business assets to a designated provider;
- elect or appoint a different director to the head of its directorship;
- transfer its membership share to other owners.

Furthermore, the GVH may:

- suspend voting rights associated with membership share, as well as
- compel its board of directors to a meeting.

In other words, the conception of this bill was not merely to expand the opportunities for state takeover, but also, through state compulsion, to arbitrarily transfer a company's assets or operations, through one step or several, to another party, including private ones, or to confiscate ownership licenses for transfer to any desired third party.

This bill was preceded by an incident where the owners of the Austrian Spar corporation rejected the Government's request to allow a relative of the Prime Minister to "purchase" an ownership share of the company. Similar "offers" have been received by other foreign enterprises that described the regime's actions as "mafia methods."

Hungary has been an autocracy since 2010. Although, on paper, the system in Hungary preserves a Weberian base of legal and rational legitimacy, in actuality the primacy of law has been replaced by the primacy of political interests over the rule of law. Government by decree has replaced government by law. Hungary has developed its own peculiar form of autocracy in which the governing machinery functions as a mafia state —a sort of centrally directed criminal organization.

In the collection of writings presented here, the editors and contributors have endeavored to give an account of this process and its devastating effects on the legal and institutional structures of the Hungarian state. At the same time, we have striven for clarity of understanding, economy of words and, ultimately, to offer the reader a broad overview of the dismantling of the constitutional structures of liberal democracy in Hungary.

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